

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS**

**United States of America,**

**Plaintiff/Respondent,**

**v.**

**Case No. 03-20013-01-JWL**

**04-3378-JWL**

**04-3381-JWL**

**Donald L. Johnson, Jr. ,**

**Defendant/Petitioner.**

**MEMORANDUM & ORDER**

The court recently denied the petitioner's motions to vacate pursuant to 28 U.S.C. § 2255 and also denied the petitioner's subsequent motion for reconsideration or, in the alternative, for a certificate of appealability. He now moves the court for leave to proceed with his appeal in forma pauperis. The motion is denied without prejudice because the petitioner has failed to comply with the applicable statute and federal rule relating to proceeding in forma pauperis. Specifically, 28 U.S.C. § 1915(a)(1) requires him to submit an affidavit "that includes a statement of all assets such [person] possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." *See Lister v. Dep't of Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005). In addition, Federal Rule of Appellate Procedure 24(a)(1) requires that the affidavit show not only the petitioner's inability to pay and his claim of entitlement to redress but also "the issues that the party intends to present on appeal." *See Fed. R. App. P. 24(a)(1)*. The petitioner, then, may refile his motion for leave to proceed with his appeal in forma pauperis at

the time he submits an affidavit in compliance with these rules.

**IT IS THEREFORE ORDERED BY THE COURT** that Mr. Johnson's motion for leave to proceed in forma pauperis (doc. 269) is denied without prejudice.

**IT IS SO ORDERED** this 30<sup>th</sup> day of November, 2005.

s/ John W. Lungstrum  
John W. Lungstrum  
United States District Judge