

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CRIMINAL ACTION
v.)	
)	No. 04-20044-01-KHV
ANDRE IVORY,)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

On May 2, 2006, the Court sentenced defendant to a controlling term of life in prison. On July 8, 2020, the Court overruled in part and dismissed in part defendant's pro se Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody (Doc. #585) filed March 27, 2020 and sustained his pro se Motion For Reduced Sentence Under Section 404(b) Of The First Step Act (Doc. #589) filed April 13, 2020. See Memorandum And Order (Doc. #592) at 13–14. On defendant's claim under the First Step Act, the Court appointed the Office of the Federal Public Defender and directed further briefing on the scope of relief. See id. Defendant has filed a pro se appeal as to the ruling on his Section 2255 motion. This matter is before the Court on defendant's Motion And Declaration For Leave To Proceed In Forma Pauperis (Doc. #603) filed September 18, 2020, which the Court construes as a motion to proceed on appeal without prepayment of fees. Because the Court previously appointed counsel for defendant under 18 U.S.C. § 3006A, he may appeal without prepayment of fees and costs or security therefor and without filing the affidavit required by Section 1915(a) of Title 28. See Fed. R. App. P. 24(a)(3); 18 U.S.C. § 3006A(d)(7).¹

¹ Under Rule 24(a)(3), defendant is permitted to proceed in forma pauperis without
(continued . . .)

IT IS THEREFORE ORDERED that defendant's Motion And Declaration For Leave To Proceed In Forma Pauperis (Doc. #603) filed September 18, 2020, which the Court construes as a motion to proceed on appeal without prepayment of fees, is **OVERRULED as moot**. Pursuant to Fed. R. App. P. 24(a)(3) and 18 U.S.C. § 3006A(d)(7), defendant may proceed on appeal without prepayment of fees. The Clerk is directed to forward a copy of this order to the Clerk of the Tenth Circuit.

Dated this 9th day of October, 2020 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge

¹(. . . continued)

further authorization unless the Court certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis. Although the Court denied a certificate of appealability as to its ruling on defendant's Section 2255 motion, see Memorandum And Order (Doc. #592) at 11, his appeal is not so frivolous that it lacks good faith. See United States v. Robinson, 762 F. App'x 571, 579 (10th Cir. 2019) (COA denied but arguments "not so thoroughly frivolous that IFP status should be denied").