

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

CHRISTOPHER PIERCE,  
Petitioner,

v.

CASE NO. 06-3301-SAC

RAY ROBERTS, et al.,  
Respondents.

O R D E R

This action filed by a state prisoner was treated as a petition for writ of habeas corpus, 28 U.S.C. 2241, and all relief was denied by Order entered November 16, 2006. Petitioner has now filed a Response (Doc. 5) and a Notice of Appeal (Doc. 6).

Petitioner's "Response to Order" is actually his "request that the present case (be) transferred to Wyandotte County District Court." This case has been dismissed, and a Notice of Appeal has been filed. The court has no authority to transfer a dismissed federal case to a state district court, and no factual or legal grounds for such a transfer are presented. Accordingly, the court finds this motion is improper, and it is denied.

Petitioner was allowed to proceed in this action in forma pauperis. Pursuant to Rule 24 of the Federal Rules of Appellate Procedure, he may proceed in forma pauperis on appeal unless the court certifies the appeal is not taken in good faith, or that petitioner is otherwise not entitled to proceed in forma pauperis. FRAP 24(a).

Mr. Pierce has filed numerous habeas petitions which have been construed as attacking execution of his sentence under 28 U.S.C.

2241<sup>1</sup>. The claim he raised in the instant petition is typical of his prior repetitive, frivolous petitions in that it does not include supporting facts or documentation, and attached exhibits do not substantiate his claim<sup>2</sup>. Since petitioner's 2241 claims have been repeatedly denied, and the instant petition utterly fails to state a claim for federal habeas corpus relief, the court certifies the appeal is not taken in good faith. Accordingly, petitioner is denied leave to proceed on appeal without prepayment of fees, without prejudice to him filing a proper motion for leave to proceed in forma pauperis in the Tenth Circuit Court of Appeals.

In his letter requesting an appeal (Doc. 6), Mr. Pierce suggested he use a \$105.00 refund owed to him by the Clerk of this Court as a partial payment on his appellate fee. The court's Finance Officer informs that the \$105.00 owed to Mr. Pierce was disbursed on December 29, 2006, to Morehei Pierce, Inmate Number 58977, at El Dorado Correctional Facility. Mr. Pierce, a/k/a Morehei Pierce, indicated in a subsequent case (Case No. 06-3355-SAC) that his current address is Larned Correctional Mental Health Facility. Since the court was not notified of Mr. Pierce's change of address before the refund check was mailed, it may take more time than usual for the check to reach Mr. Pierce. However, the court assumes prison authorities at El Dorado are forwarding his mail from the court, and Mr. Pierce will receive his refund check. The funds owed to Mr. Pierce are no longer being held by the court, and cannot

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<sup>1</sup> He is a three-strikes litigant for civil rights claims, and has filed a 2254 petition found to be second and successive.

<sup>2</sup> Petitioner has repeatedly been informed of the requirements that he exhaust state court and prison administrative remedies prior to filing in federal court.

be applied as a partial payment on his appellate fee.

Petitioner's letter requesting to appeal is also treated as his request for a Certificate of Appealability (Doc. 6). Mr. Pierce, a state prisoner, is entitled to a Certificate of Appealability only upon making a "substantial showing of the denial of a constitutional right." 28 U.S.C. 2253(c)(2); Montez v. McKinna, 208 F.3d 862 (10<sup>th</sup> Cir. 2000). Such a showing is made by demonstrating that the issues he seeks to raise on appeal are deserving of further proceedings, subject to different resolution on appeal, or reasonably debatable among jurists of reason. See Barefoot v. Estelle, 463 U.S. 880, 893, FN4 (1983). For the reasons set forth in the court's order of November 16, 2006, and herein, this court finds Mr. Pierce cannot satisfy that burden. Accordingly, this court denies Mr. Pierce's request for a Certificate of Appealability.

**IT IS THEREFORE ORDERED** that petitioner's response (Doc. 5), which includes a request for transfer of this action, is denied.

**IT IS FURTHER ORDERED** that petitioner is denied leave to proceed in forma pauperis on appeal, without prejudice to his filing a proper motion for leave in the appellate court; and his request for a Certificate of Appealability (Doc. 6) is denied.

**IT IS SO ORDERED.**

Dated this 9th day of January, 2007, at Topeka, Kansas.

s/Sam A. Crow  
U. S. Senior District Judge