IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

)	
ANDRE GRAHAM,)	
)	
Petitioner.)	
)	
v.)	Case No. 07-40048-01-JAR
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
_)	

MEMORANDUM AND ORDER

This action has been dismissed and all relief denied. The Court issued a Memorandum and Order on January 31, 2011, denying petitioner Andre Graham's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence. On February 2, 2011, the Court issued a second Memorandum and Order denying petitioner a certificate of appealability ("COA"). Now before this Court is petitioner's Notice of Appeal and Request for Certificate of Appealability (Doc. 106), and Motion to Proceed In Forma Pauperis (Doc. 107).

With regard to the request for COA, the Court incorporates its previous findings and for the same reasons denies petitioner's motion for COA.

Petitioner has also filed a motion captioned "Appellant's Motion to Proceed In Forma Pauperis." He states that he was previously found financially unable to obtain adequate defense and was appointed counsel to represent him in the underlying criminal case. He argues that he should be allowed to proceed *in forma pauperis* on appeal without a redetermination of indigence. Petitioner apparently intends for this motion to serve as a motion to proceed *in forma pauperis* on appeal.

To obtain in forma pauperis status, a petitioner must show "a financial inability to pay

the required fees" and "a reasoned, nonfrivolous argument on the law and facts in support of the

issues raised on appeal." Rule 24(a)(3) of the Federal Rules of Appellate Procedure provides in

pertinent part:

Prior Approval. A party who was permitted to proceed in forma

pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further

authorization, unless:

(A) the district court—before or after the notice of appeal is

filed—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 petitioner originally retained counsel in the underlying criminal matter, he was

appointed counsel prior to his sentencing. Accordingly, the Court finds that petitioner is allowed

to proceed in forma pauperis on appeal.

IT IS THEREFORE ORDERED BY THE COURT that petitioner's Request for

Certificate of Appealability (Doc. 106) is **DENIED**; and petitioner's Motion to Proceed In

Forma Pauperis (Doc. 107) is **GRANTED**.

IT IS SO ORDERED.

Dated: February 15, 2011

S/ Julie A. Robinson JULIE A. ROBINSON

UNITED STATES DISTRICT JUDGE

¹McIntosh v. U.S. Parole Comm'n, 115 F.3d 809, 812 (10th Cir. 1997) (quoting DeBardeleben v. Quinlan, 937 F.2d 502, 505 (10th Cir.1991)) (internal quotation marks omitted).

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