

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KENDRICK JERMAINE FULTON,

Petitioner,

v.

CASE NO. 11-3015-RDR

CLAUDE CHESTER,

Respondent.

O R D E R

Petitioner initiated this action by filing a petition for writ of habeas corpus under 28 U.S.C. § 2241. The court dismissed the petition for lack of jurisdiction, finding petitioner made no showing the remedy afforded under 28 U.S.C. § 2255 before the sentencing court in the Northern District of Texas was inadequate or ineffective. Before the court is petitioner's notice of appeal, and motion for leave to proceed in forma pauperis in that appeal.

Petitioner paid the \$5.00 district court filing fee, but now states he is unable to pay the costs for his appeal, including the \$455.00 appellate filing fee.

To obtain authorization to proceed in an action in forma pauperis a person must "submit an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1). See also Fed.R.App.P. 24(a)(1). However, "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). See also Fed.R.App.P. 24(a)(3) (even if granted leave to

proceed in forma pauperis in district court, no entitlement to proceed in forma pauperis on appeal if district court certifies the appeal is not taken in good faith).

Having reviewed the record, the court finds petitioner's appeal presents no facts or legal theory in support of his argument that this court has jurisdiction under § 2241 to consider petitioner's claims. While petitioner documents his inability to pay the \$455.00 appellate filing fee, the court certifies the appeal is not taken in good faith, and thus denies petitioner's motion for leave to proceed in forma pauperis on appeal.

IT IS THEREFORE ORDERED that petitioner's motion for leave to proceed in forma pauperis on appeal (Doc. 11) is denied.

DATED: This 8th day of June 2011, at Topeka, Kansas.

s/ Richard D. Rogers
RICHARD D. ROGERS
United States District Judge