

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

JOHNNY SCOTT WARREN,

Petitioner,

v.

CASE NO. 17-3096-JWL

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM AND ORDER

This matter is a petition for habeas corpus filed under 28 U.S.C. § 2241. Petitioner, a federal prisoner held at the U.S. Penitentiary, Leavenworth, Kansas, sought relief from his conviction in the U.S. District Court for the District of Colorado.

On June 6, 2017, the Court found no compelling ground to justify petitioner's use of the saving clause of 28 U.S.C. § 2255(e) to proceed under § 2241 and dismissed this matter. Petitioner has filed a Motion for Certificate of Appealability (Doc. #5).

The Court liberally construes the petitioner's motion for a certificate of appealability as a notice of appeal. *See Tijerina v. Patterson*, 244 Fed.Appx. 235, 2007 WL 2203438 at *2 (Aug. 2, 2007) (finding pro se prisoner's timely application for a certificate of appealability was the "functional equivalent" of timely-filed notice of appeal). Because petitioner has not submitted the \$505.00 filing fee or a motion to proceed in forma pauperis on appeal, the Court will direct him to submit either the fee or a motion to proceed in forma pauperis.

As a federal prisoner proceeding under § 2241, petitioner is not required to obtain a certificate of appealability. *See McIntosh v.*

United State Parole Commission, 115 F.3d 809, 810 n. 1 (10th Cir. 1997). The Court denies his motion.

IT IS, THEREFORE, BY THE COURT ORDERED petitioner is granted to and including July 21, 2017, to submit to the clerk of the court the appellate filing fee or a motion to proceed in forma pauperis.

IT IS FURTHER ORDERED petitioner's motion for certificate of appealability (Doc. #5) is denied.

IT IS SO ORDERED.

DATED: This 23rd day of June, 2017, at Kansas City, Kansas.

s/ John W. Lungstrum

JOHN W. LUNGSTRUM
U.S. District Judge