

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

GLENN LEE SELDEN,

Petitioner,

v.

Case No: 2:18-cv-115-FtM-29MRM

ELIZABETH A. KOVACHEVICH and
FLORIDA ATTORNEY GENERAL,

Respondents.

ORDER OF DISMISSAL

This matter comes before the Court on Petitioner Glenn Lee Selden's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by Person in State Custody (Doc. #1, "Petition") filed February 20, 2018. Although the Petition is virtually unintelligible, it appears that Petitioner moves the Court for immediate release from incarceration. Doc. #1 at 15. As more fully set forth below, the Court finds the Petition is due to be dismissed.

Petitioner, is an inmate incarcerated within the Florida Department of Corrections ("DOC") at Moore Haven Correctional Facility. Petitioner is serving a fifteen (15) year sentence and various concurrent five (5) years sentences in connection with offenses committed on or about March 22, 2006, for which he was sentenced on August 20, 2007. See Florida Department of Corrections Offender Network, located at www.dc.state.fl.us.

Rule 4, Rules Governing Section 2254 Cases, requires both a

preliminary review of an application for the writ of habeas corpus and summary dismissal "[i]f it plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the district court. . . ." The Court takes judicial notice that Petitioner has already filed a 28 U.S.C. § 2254 petition challenging the conviction for which he currently is incarcerated. See Selden v. McNeil, Case No. 8:10-cv-02259-T-33EAJ (M.D. Fla.). Petitioner has not obtained leave from the Eleventh Circuit Court of Appeals to file a successive petition. See 28 U.S.C. § 2244(b); Rules Governing Section 2254 Cases in The United States District Courts, R. 9; Wells v. AG, 470 F. App'x 754, 756 (11th Cir. 2012) (district court must dismiss a second or successive petition for a writ of habeas corpus brought under § 2254 for lack of jurisdiction unless the prisoner has obtained an order from the appropriate court of appeals authorizing the district court to consider it). Consequently, this case will be dismissed without prejudice to allow Petitioner the opportunity to seek authorization from the Eleventh Circuit Court of Appeals.

Petitioner should be aware that § 2244(b)(2) limits the circumstances under which the Court of Appeals will authorize the filing of a second or successive habeas corpus petition. Furthermore, 28 U.S.C. § 2244(d) imposes a time limitation on the filing of a habeas corpus petition. Petitioner, in seeking relief in the Court of Appeals, should be cognizant of both these


provisions.

ACCORDINGLY, it is hereby

ORDERED:

1. This case is hereby **DISMISSED** without prejudice.
2. The **Clerk of Court** is directed to terminate any pending motions, close this case, and send Petitioner an "Application for Leave to File a Second or Successive Habeas Corpus Petition 28 U.S.C. § 2244(b) By a Prisoner in State Custody" form.

DONE and ORDERED at Fort Myers, Florida, this 30th day of March, 2018.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

SA: FTMP-1
Copies:
Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
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GLENN LEE SELDEN,

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Case No: 2:18-cv-115-FtM-29MRM

ELIZABETH A. KOVACHEVICH and
FLORIDA ATTORNEY GENERAL,

Respondents.

ORDER

This matter comes before the Court on Petitioner's Motion for Appeal (Doc. #15) filed on April 27, 2018, and Motion to Proceed In District Court Without Prepaying Fees (Doc. #20) filed on May 24, 2018. On March 30, 2018, the Court, finding it lacked jurisdiction to consider Petitioner's successive 28 U.S.C. § 2254, dismissed this action (Doc. #11), and judgment was entered on April 2, 2018 (Doc. #12). Petitioner filed a pleading titled "Notice of Appeal" (Doc. #16) on May 14, 2018. On May 21, 2018, the Court denied Petitioner's construed motion for reconsideration (Doc. #19). To the extent discernable, Petitioner, who is incarcerated within the Florida Department of Corrections, seeks to appeal the Court's March 30, 2018, Order and wishes to proceed on appeal *in forma pauperis*.

Because the Court lacked jurisdiction to consider the successive petition, the Court lacks jurisdiction to grant or deny

a certificate of appealability. See 28 U.S.C. § 2253(c); Boone v. Sec'y, Dep't of Corr., 377 F.3d 1315, 1317 (11th Cir. 2004); see also Scotton v. U.S. 2017 WL 7511339 *2 (11th Cir. 2017). Nonetheless, because the Court's March 30, 2018, Order is a final order, Petitioner may seek review pursuant to 28 U.S.C. § 1291. Thus, his appeal is subject Title 28 U.S.C. § 1915 and Rule 24 of the Federal Rules of Appellate Procedure, which govern applications to proceed *in forma pauperis* on appeal. Essentially, two requirements must be met to appeal in forma pauperis: (1) a party must demonstrate an inability to pay; and (2) the appeal must be brought in good faith. An 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). Good faith on appeal is demonstrated by an objective standard of a nonfrivolous issue. Coppedge v. U.S. 369 U.S. 438, 445 (1962).

It is entirely unclear from a review of either the Motion for Appeal (Doc. #15) or Notice of Appeal (Doc. #16) what issues Petitioner intends to present on appeal. Fed. R. Civ. P. 24(a)(1)(C). Upon review of this matter, the Court finds that the appeal is not taken in good faith, and certifies that the appeal is not in good faith. Because the Court has certified that this appeal is not taken in good faith, any request to proceed *in forma pauperis* should be sent directly to the Eleventh Circuit Court of Appeals. See Fed. R. App. P. 24(a)(5).

Accordingly, it is hereby

ORDERED:

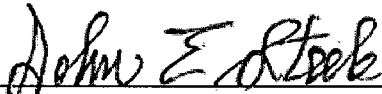
1. The **Clerk** shall docket Petitioner's "Motion for Appeal" (Doc. #15) as a notice of appeal and terminate it from the pending motions report.

2. Pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(4), the Court certifies that this appeal is not taken in good faith.

3. Petitioner's motion to proceed in *forma pauperis* on appeal (Doc. #20) is **DENIED** and Petitioner is assessed the \$505.00 appellate filing fee for this matter. 28 U.S.C. § 1915(b)(1).

4. The **Clerk of Court** shall immediately forward a copy of this Order to Plaintiff and the Clerk for the United States Court of Appeals for the Eleventh Circuit.

DONE and ORDERED at Fort Myers, Florida, this 28th day of June, 2018.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

SA: FTMP-1
Copies:
Counsel of Record

APPEAL, CLOSED, FTMP-1, HABEAS, MAIL

U.S. District Court
Middle District of Florida (Ft. Myers)
CIVIL DOCKET FOR CASE #: 2:18-cv-00115-JES-MRM
Internal Use Only

Selden v. Kovachevich
Assigned to: Judge John E. Steele
Referred to: Magistrate Judge Mac R. McCoy
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 02/22/2018
Date Terminated: 04/02/2018
Jury Demand: Plaintiff
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: U.S. Government Defendant

Petitioner**Glenn Lee Selden**represented by **Glenn Lee Selden**

755311
Moore Haven Correctional Facility
PO Box 719001
Moore Haven, FL 33471
PRO SE

V.

Respondent**Elizabeth A. Kovachevich****Respondent****Florida Attorney General**

*Public Policy LAW Allows rebuttal
AGAINST THE GOV. AT "ANYTIME"*

Date Filed	#	Docket Text
02/20/2018	<u>1</u>	PETITION for Writ of Habeas Corpus -Federal filed by Glenn Lee Selden. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Mailing Envelope)(MLS) (Entered: 02/22/2018)
02/20/2018	<u>4</u>	Petitioner's MOTION to lift sanctions Rules of Order Art 1x Section 51 - Trustee has Pres Privelege by Special Rule by Glenn Lee Selden. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Mailing Envelope)(MLS) (Entered: 02/22/2018)
02/20/2018	<u>5</u>	Petitioner's MOTION for miscellaneous relief, specifically to restore coustodian to origional position Rules of Order Art 1x Section 51 Trustee has Pres Privelege by Glenn Lee Selden. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Mailing Envelope)(MLS) (Entered: 02/22/2018)

02/20/2018	<u>6</u>	Petitioner's CERTIFICATE of service re <u>4</u> MOTION for sanctions, <u>5</u> MOTION for miscellaneous relief, specifically to restore coustodian to original position by Glenn Lee Selden (Attachments: # <u>1</u> Mailing Envelope)(MLS) (Entered: 02/22/2018)
02/22/2018	<u>2</u>	STANDING ORDER for all confined, pro se litigants. Signed by All Divisional Judges on 2/22/2018. (MLS) (Entered: 02/22/2018)
02/22/2018	<u>3</u>	STANDING ORDER: Filing of documents that exceed twenty-five pages. Signed by All Divisional Judges on 2/22/2018. (MLS) (Entered: 02/22/2018)
02/28/2018	<u>7</u>	RELATED CASE ORDER AND NOTICE of designation under Local Rule 3.05 - track 1. Notice of pendency of other actions due by 3/14/2018. Signed by All Divisional Judges on 2/28/2018. (WRW) (Entered: 02/28/2018)
03/08/2018	<u>8</u>	MOTION for leave to proceed in forma pauperis/affidavit of indigency by Glenn Lee Selden. (Attachments: # <u>1</u> Mailing Envelope)(SLU) Motions referred to Magistrate Judge Mac R. McCoy. (Entered: 03/08/2018)
03/08/2018	<u>9</u>	EQUITY law restricts judicial process by Glenn Lee Selden. (Attachments: # <u>1</u> Main Document, # <u>2</u> Main Document, # <u>3</u> Mailing Envelope) (SLU) (Entered: 03/08/2018)
03/20/2018	<u>10</u>	NOTICE of pendency of related cases re <u>7</u> Related case order and track 1 notice per Local Rule 1.04(d) by Glenn Lee Selden. Related case(s): yes (Attachments: # <u>1</u> Exhibit, # <u>2</u> Mailing Envelope)(SLU) (Entered: 03/20/2018)
03/30/2018	<u>11</u>	ORDER OF DISMISSAL dismissing case without prejudice. The Clerk is directed to close the case and send petitioner an "Application for Leave to File a Second or Successive Habeas Corpus Petition 28 U.S.C. § 2244(b) By a Prisoner in State Custody" form. Signed by Judge John E. Steele on 3/30/2018. (RKR) (Entered: 03/30/2018)
04/02/2018	<u>12</u>	JUDGMENT in favor of Florida Attorney General, Elizabeth A. Kovachevich against Glenn Lee Selden (Signed by Deputy Clerk) (MLS) (Entered: 04/02/2018)
04/16/2018	12 <u>13</u>	MOTION for Rehearing by Glenn Lee Selden. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Mailing Envelope)(SLU) Motions referred to Magistrate Judge Mac R. McCoy. (Entered: 04/16/2018)
04/27/2018	<u>14</u>	NOTICE of inquiry by Glenn Lee Selden re <u>13</u> MOTION for Reconsideration (Attachments: # <u>1</u> Mailing Envelope)(SLU) (Entered: 04/27/2018)
04/27/2018	14 <u>15</u>	MOTION for leave to appeal by Glenn Lee Selden. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Mailing Envelope)(SLU) (Entered: 04/27/2018)
05/14/2018	<u>16</u>	NOTICE OF APPEAL by Glenn Lee Selden. Filing fee not paid. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Mailing Envelope)(SLU) (Entered: 05/14/2018)

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

U.S. Courthouse & Federal Building

Office of the Clerk

2110 First Street, Room 2-194

Fort Myers, FL 33901

(239) 461-2000

www.flmd.uscourts.gov

Elizabeth M. Warren

Clerk of Court

Mark Middlebrook

Fort Myers Division Manager

DATE: May 15, 2018

TO: Clerk, U.S. Court of Appeals for the Eleventh Circuit

GLENN LEE SELDEN, *No LARGE LETTER*
Petitioner,

v.

Case No: 2:18-cv-115-FtM-29MRM

ELIZABETH A. KOVACHEVICH and FLORIDA
ATTORNEY GENERAL,

Respondents.

U.S.C.A. Case No.:

- Honorable John E. Steele, United States District Judge appealed from.
- Appeal filing fee was not paid. Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals. If you are filing in forma pauperis, a request for leave to appeal in forma pauperis needs to be filed with the district court.
- Copy of Notice of Appeal and docket entries as Notice of Appeal does not state which document is being appealed. Opinion was not entered orally.
- Pending Motions:

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ELIZABETH M. WARREN, CLERK

By: s/S. Upshaw, Deputy Clerk
Pro Se Prison Litigation Specialist+

