

No. \_\_\_\_\_

In The Supreme Court of the United States

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Deontray Vershon Tate, Petitioner

v.

Jeff Titus, Warden, Rush City Correctional Facility, Minnesota, Respondent.

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Motion for Leave to Proceed *In Forma Pauperis*

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The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s);

Petitioner's affidavit or declaration of this motion is attached hereto.

Minnesota Federal District Court. A copy of the order is attached hereto.

Dated: March 21, 2019

**Longsdorf Law Firm, P.L.C.**



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## Motion and Affidavit for Permission to Appeal In Forma Pauperis

v.

Appeal No. \_\_\_\_\_  
District Court or Agency No. \_\_\_\_\_

### Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: D. Hite

### Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date: 2-20-19

### My issues on appeal are:

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months	Amount expected next month
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	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Self-employment	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Interest and dividends	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Gifts	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Alimony	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>

Child support	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Disability (such as social security insurance payments)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Unemployment payments	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Other (specify): _____	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
<b>Total monthly income:</b>	<b>\$ <u>0</u></b>	<b>\$ <u>0</u></b>	<b>\$ <u>0</u></b>	<b>\$ <u>0</u></b>

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
<u>None</u>	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
<u>None</u>	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. How much cash do you and your spouse have? \$ 0

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
<u>None</u>	<u>None</u>	\$ <u>0</u>	\$ <u>0</u>
_____	_____	\$ <u>0</u>	\$ <u>0</u>
_____	_____	\$ <u>0</u>	\$ <u>0</u>

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Motor vehicle #2	(Value)	Other assets	(Value)	Model:	
Make & year:	<u>N</u>			Registration #:	
Model:				Other assets	(Value)
Registration #:					

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>N</u>	<u>N</u>	<u>N</u>

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
<u>N</u>		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>0</u>	\$ <u>0</u>
Are real-estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>0</u>	\$ <u>0</u>
Home maintenance (repairs and upkeep)	\$ <u>0</u>	\$ <u>0</u>
Food	\$ <u>0</u>	\$ <u>0</u>
Clothing	\$ <u>0</u>	\$ <u>0</u>

Laundry and dry-cleaning	\$ <u>0</u>	\$ <u>0</u>
Medical and dental expenses	\$ <u>0</u>	\$ <u>0</u>
Transportation (not including motor vehicle payments)	\$ <u>0</u>	\$ <u>0</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u>0</u>
Insurance (not deducted from wages or included in Mortgage payments)	\$ <u>0</u>	\$ <u>0</u>
Homeowner's or renter's	\$ <u>0</u>	\$ <u>0</u>
Life	\$ <u>0</u>	\$ <u>0</u>
Health	\$ <u>0</u>	\$ <u>0</u>
Motor Vehicle	\$ <u>0</u>	\$ <u>0</u>
Other: _____	\$ <u>0</u>	\$ <u>0</u>
Taxes (not deducted from wages or included in Mortgage payments) (specify): _____	\$ <u>0</u>	\$ <u>0</u>
Installment payments		
Motor Vehicle	\$ <u>0</u>	\$ <u>0</u>
Credit card (name): _____	\$ <u>0</u>	\$ <u>0</u>
Department Store (name): _____	\$ <u>0</u>	\$ <u>0</u>
Other: _____	\$ <u>0</u>	\$ <u>0</u>
Alimony, maintenance, and support paid to others	\$ <u>0</u>	\$ <u>0</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>0</u>	\$ <u>0</u>
Other (specify): _____	\$ <u>0</u>	\$ <u>0</u>
<b>Total monthly expenses:</b>	<b>\$ <u>0</u></b>	<b>\$ <u>0</u></b>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes  No

If yes, describe on an attached sheet.

10. Have you paid — or will you be paying — an attorney any money for services in connection with this case, including the completion of this form?  Yes  No *This was paid for by Family & Friends*  
If yes, how much? \$ 6,000.00

If yes, state the attorney's name, address, and telephone number:

Zachary A. Longsdorf  
5854 Blackshire Path  
Inver Grove Heights, MN 55076

11. Have you paid — or will you be paying — anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes  No

If yes, how much? \$ \_\_\_\_\_

If yes, state the person's name, address, and telephone number:

\_\_\_\_\_

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

I'm Incarcerated

13. State the address of your legal residence.

None

Your daytime phone number: ( ) None

Your age: 40 Your years of schooling: 12<sup>th</sup>

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Deontray Vershon Tate,

Petitioner,

v.

Case No. 17-cv-4594 (JNE/BRT)  
ORDER

Jeff Titus, Warden, Rush City Correctional  
Facility,

Respondent.

In a Report and Recommendation dated April 19, 2018, the Honorable Becky R. Thorson, United States Magistrate Judge, recommended that Petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2254 (2012) be denied, that a certificate of appealability be denied, and that this action be dismissed with prejudice. Petitioner objected. Later, he sought a stay. The Court denied Petitioner's motion for a stay, overruled his objections to the Report and Recommendation, accepted the recommended disposition, and entered judgment. Petitioner filed a notice of appeal, as well as an application to proceed in forma pauperis on appeal and a motion for a certificate of appealability.

*In forma pauperis*

The Court's review of Petitioner's application to proceed in forma pauperis on appeal reveals that he qualifies for in forma pauperis status.<sup>1</sup> *See* 28 U.S.C. § 1915(a)(1) (2012). The Court declines to certify that the appeal is not taken in good faith. *See id.*

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<sup>1</sup> Petitioner is represented by counsel. In his application, he stated that he paid his attorney with the help of his family and friends.

§ 1915(a)(3); *cf. Thomas v. Zatecky*, 712 F.3d 1004, 1006 (7th Cir. 2013) (stating “an appeal can be non-frivolous and still flunk the standard established by § 2253(c)(2)”; *Kramer v. Kemna*, 21 F.3d 305, 307 (8th Cir. 1994) (“Good faith and lack of frivolousness, without more, do not serve as sufficient bases for issuance of a certificate under 28 U.S.C. § 2253.”). The Court grants Petitioner’s application to proceed in forma pauperis on appeal.

***Certificate of appealability***

Rule 11(a) of the Rules Governing Section 2254 Cases in the United States

District Courts states:

The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. . . . If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

When it considered Petitioner’s objections to the Report and Recommendation, the Court denied a certificate of appealability. Nothing in Petitioner’s motion causes the Court to reconsider that denial. Petitioner’s motion for a certificate of appealability is denied.

***Conclusion***

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Petitioner’s application to proceed in forma pauperis on appeal [Docket No. 25] is GRANTED.

2. Petitioner's motion for a certificate of appealability [Docket No. 26] is DENIED.

Dated: July 11, 2018

s/ Joan N. Erickson

JOAN N. ERICKSEN

United States District Judge