

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted January 15, 2019

Decided January 25, 2019

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

No. 18-2021

ANDRE FORBES,
Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

Appeal from the United States District
Court for the Northern District of Indiana,
South Bend Division.

No. 3:16-cv-350

Jon E. DeGuilio,
Judge.

ORDER

Andre Forbes has filed a notice of appeal from the denial of his motion under 28 U.S.C. § 2255, which we construe as an application for a certificate of appealability. We have reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED. Forbes's motion to proceed in forma pauperis is DENIED.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	Case No. 3:14-CR-026 JD
)	3:16-CV-350-JD
ANDRE ALLAN FORBES)	

ORDER

Defendant Andre Forbes has filed a notice of appeal [DE 172] from this Court's order denying his motion for reconsideration of the order denying the issuance of a certificate of appealability [DE 170]. Mr. Forbes has not paid a filing fee for that notice of appeal. Pursuant to Federal Rule of Appellate Procedure 24(a)(3)(A), a defendant may not proceed in forma pauperis if "the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith . . . and states in writing its reasons for the certification." *See also* 28 U.S.C. § 1915(a)(3).

Here, the Court certifies that Mr. Forbes' appeal is not taken in good faith. After this Court denied Mr. Forbes' § 2255 petition [DE 151], both the undersigned and the court of appeals denied Mr. Forbes a certificate of appealability. Those denials were premised on the proper legal standard; and therefore, Mr. Forbes could not appeal in good faith from the order denying that motion.

Pursuant to Federal Rule of Appellate Procedure 24(a)(4)(B), the Clerk is DIRECTED to forward this order to the Clerk of the Court of Appeals for the Seventh Circuit, in relation to its case number 18-2021, to notify the court of appeals that this Court has certified that the appeal is not taken in good faith.

SO ORDERED.

ENTERED: May 29, 2018

/s/ JON E. DEGUILIO

Judge

United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA

v.

ANDRE ALLAN FORBES

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Case No. 3:14-CR-026 JD
3:16-CV-350 JD

ORDER

On February 9, 2017, the Court denied Defendant Andre Forbes' petition pursuant to 28 U.S.C. § 2255 [DE 151]. The Court also denied the issuance of a certificate of appealability ("COA") stating that Mr. Forbes' claims were "not sufficient to deserve encouragement to proceed further, and their resolution [was] not debatable." [DE 151 at 11]. On appeal, the Seventh Circuit denied Mr. Forbes' request for a COA, indicating that there was "no substantial showing of the denial of a constitutional right" consistent with 28 U.S.C. § 2253(c)(2) [Case No. 17-1669, DE 167-1].

Now before the Court is Mr. Forbes' Rule 60(b) motion [DE 168], asking the Court to reconsider the denial of his COA in light of the Supreme Court's February 22, 2017 decision clarifying the COA standard in *Buck v. Davis*, 137 S. Ct. 759, 773 (2017) (indicating that a COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right . . . [a]t the COA stage, the only question is whether the applicant has shown that 'jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.'" (internal citations and citations omitted). However, this Court's initial COA determination was not inconsistent with the standard set forth in *Buck*; and moreover, the Seventh Circuit denied Mr. Forbes a COA on August 9, 2017, which was after *Buck* had been

decided. Accordingly, the Court DENIES Mr. Forbes' request to reconsider the denial of his COA [DE 168].

SO ORDERED.

ENTERED: April 19, 2018

/s/ JON E. DEGUILIO
Judge
United States District Court