

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-2049

Larry David Davis

Petitioner - Appellant

v.

Dexter Payne, Director, Arkansas Department of Correction

Respondent - Appellee

Appeal from U.S. District Court for the Western District of Arkansas - Hot Springs
(6:18-cv-06125-RTD)

JUDGMENT

Before KELLY, WOLLMAN, and STRAS, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

All pending motions are denied.

September 03, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Appendix A *A/*

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 20-2049

Larry David Davis

Appellant

v.

Dexter Payne, Director, Arkansas Department of Correction

Appellee

Appeal from U.S. District Court for the Western District of Arkansas - Hot Springs
(6:18-cv-06125-RTD)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

October 05, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Appendix A2

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

LARRY DAVID DAVIS

PETITIONER

v.

CIVIL NO. 6:18-cv-06125

DEXTER PAYNE, Director,
Arkansas Department of Correction

RESPONDENT

ORDER

The Court has received a Report and Recommendation (ECF No. 21) from United States Magistrate Judge Barry A. Bryant. Petitioner Larry David Davis proceeds *pro se* in his Motion for Leave to Appeal *in forma pauperis* (ECF No. 19). Upon review, the Magistrate recommended that the motion to proceed IFP on appeal should be granted and recommended further that no Certificate of Appealability be granted in this matter because Petitioner has failed to make a substantial showing of any constitutional right. Davis filed timely Objections (ECF No. 23) to the Report and Recommendation. The matter is now ripe for consideration.

The Court has conducted a de novo review of those portions of the report and recommendation to which Davis has objected. 28 U.S.C. § 636(b)(1). Petitioner's objections offer neither law nor fact requiring departure from the Magistrate's findings. The report and recommendation is proper, contains no clear error, and is ADOPTED IN ITS ENTIRETY.

IT IS THEREFORE ORDERED that the Motion (ECF No. 19) should be and hereby is GRANTED.

IT IS FURTHER ORDERED that no Certificate of Appealability shall be granted in this matter.

SO ORDERED this 25th day of May 2020.

/s/Robert T. Dawson
ROBERT T. DAWSON
SENIOR U.S. DISTRICT JUDGE

Appendix B3

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

LARRY DAVID DAVIS

PETITIONER

v.

Case No. 6:18-cv-6125

**WENDY KELLY, Director
Arkansas Dept. Of Correction**

RESPONDENT

ORDER

Came on for consideration **LARRY DAVID DAVIS**'s Petition for Writ of *Habeas Corpus* pursuant Title 28 U.S.C. §2254 (ECF No. 1), and Petitioner's Motion to Proceed *In Forma Pauperis* (ECF No. 3). Having reviewed the Petition for Writ of *Habeas Corpus*, the Court is of the opinion that the Petitioner should be allowed to proceed *in forma pauperis*.

IT IS THEREFORE ORDERED that the Motion for Leave to Proceed *In Forma Pauperis* (ECF No. 4) is **GRANTED**, and Petitioner is allowed to proceed *in forma pauperis*.

IT IS FURTHER ORDERED, the Clerk of the Court is directed to serve, by certified mail, the Petition and supporting documents, as well as a copy of this Order, on the Respondent, Wendy Kelly, and the Attorney General of the State of Arkansas without prepayment of fees and cost or security therefor. *See Rule 4, RULES GOVERNING SECTION 2254 CASES IN THE UNITED STATES DISTRICT COURT*. The addresses to be used are as follows:

Wendy Kelly
Arkansas Board of Correction, Compliance Division
P.O. Box 20550
Whitehall, AR 71612

Leslie Rutledge

Appendix B9

Orders on Motions

6:18-cv-06125-SOH-BAB Davis v.
Kelley

HABEAS,CASREF

U. S. District Court**Western District of Arkansas****Notice of Electronic Filing**

The following transaction was entered on 12/20/2018 at 9:55 AM CST and filed on 12/20/2018

Case Name: Davis v. Kelley
Case Number: 6:18-cv-06125-SOH-BAB
Filer:
Document Number: 5

Docket Text:

ORDER granting [3] Motion for Leave to Proceed in forma pauperis; **ORDER DIRECTING THE CLERK OF COURT TO SERVE** Wendy Kelley and the Attorney General of the State of Arkansas and granting 30 days to answer. Signed by Honorable Barry A. Bryant on December 20, 2018. (mjm)

6:18-cv-06125-SOH-BAB Notice has been electronically mailed to:

6:18-cv-06125-SOH-BAB Notice has been delivered by other means to:

Larry David Davis
123330
ADC - DELTA REGIONAL UNIT
880 East Gaines
Dermott, AR 71638-9505

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1094675213 [Date=12/20/2018] [FileNumber=1731335-0] [0478d113e399cc22357b2bfff3d4ff4ce6e68c99db98be1f5efafe6bf941b5dd44a60f3b98e17f8cfa8b824b3c8a0b69a6c405ccf587718132fbda919e8bd6f84]]

Appendix B

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

LARRY DAVID DAVIS

PETITIONER

v.

Case No. 6:18-cv-06125

DEXTER PAYNE¹, Director,
Arkansas Department of Correction

RESPONDENT

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Before the Court is the Motion for Leave to Appeal *In Forma Pauperis* (ECF No. 19) filed by Larry David Davis, an inmate confined in the Arkansas Department of Correction, Delta Regional Unit.

1. **Discussion:**

On January 27, 2020, this Court dismissed the Petition in this matter. ECF No. 17. On Petitioner now seeks to appeal that dismissal and asks to be allowed to proceed *in forma pauperis* (IFP). ECF No. 19. Petitioner was previously found qualified to proceed IFP and his instant Motion shows he is still entitled to proceed IFP.

While Petitioner is entitled to proceed IFP, it does not appear there is a good faith reason to grant a Certificate of Appealability in this case. As shown in this Court's prior rulings (ECF Nos. 15 and 17), Petitioner has made no substantial showing of the denial of a constitutional right, as required by 28 U.S.C. 2253(c). Accordingly no Certificate of Appealability should issue here.

¹ Dexter Payne has succeeded Wendy Kelley as the Director of the Arkansas Division of Correction. He is automatically substituted as the party herein pursuant to Fed. R. Civ. P. 25(d).

2. **Recommendation:**

Accordingly, based on the foregoing, it is recommended the instant Motion to Proceed IFP on Appeal (ECF No. 19) should be **GRANTED**. The undersigned also recommends that no Certificate of Appealability be granted in this matter as Petitioner has failed to make a substantial showing of denial of any constitutional right.

The Parties have fourteen (14) days from receipt of this report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The Parties are reminded that objections must be both timely and specific to trigger *de novo* review by the district court.

DATED this 18th day of February 2020.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
UNITED STATES MAGISTRATE JUDGE

APPENDIX C

ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-18-347

LARRY DAVID DAVIS

v.

STATE OF ARKANSAS

APPELLANT

APPELLEE

Opinion Delivered November 7, 2018

APPEAL FROM THE CLARK
COUNTY CIRCUIT COURT
[NO. 10CR-17-70]

HONORABLE GREGORY L.
VARDAMAN, CIRCUIT JUDGE

AFFIRMED

N. MARK KLAPPENBACH, Judge

On November 29, 2017, appellant Larry David Davis appeared before the Clark County Circuit Court to enter a negotiated plea of no contest to the crimes of commercial burglary, theft of property, and breaking or entering, as charged in circuit court case number CR-17-70. The State had accused Davis of breaking into the office of the Southfork Truck Stop in Clark County and stealing money on April 4, 2017. At the conclusion of the plea hearing, the trial court sentenced Davis, as a habitual offender, to concurrent prison terms for a total of thirty years to be served in the Arkansas Department of Correction. A sentencing order was filed to memorialize the plea and sentencing. Davis filed a petition for postconviction relief in case number CR-17-70 pursuant to Arkansas Rule of Criminal Procedure 37. The circuit court entered an order denying Davis's petition without conducting an evidentiary hearing. Davis filed a timely notice of appeal from that order. We affirm.

APPENDIX C

IN THE CIRCUIT COURT OF CLARK COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

vs.

(10)CR. 2017- 70

LARRY DAVID DAVIS

DEFENDANT

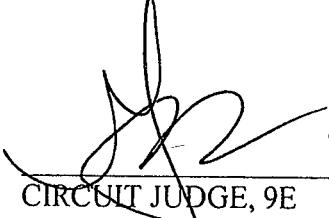
ORDER DENYING RULE 37 PETITION

BEFORE the Court is Defendant's *RULE 37 PETITION*, and the Court, being well and sufficiently advised of the facts and law hereby finds and Orders as follows:

1. On November 29, 2017, following a recital of rights, the Defendant voluntarily entered a plea of guilty to the offenses charged against him in Clark County cases (10)CR. 2017- 70.

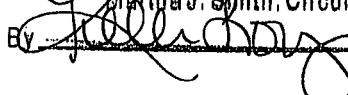
The Court hereby finds and Orders that Defendant's *Rule 37 Petition* should be and hereby is DENIED, as Defendant has failed to provide cognizable claims under Ark. R. Crim. Pro. 37 following his voluntary plea of guilt in each case, and as such is not entitled to such relief pursuant to the voluntary guilty pleas.

IT IS SO ORDERED.


CIRCUIT JUDGE, 9E

DATE: 1/29/18

Clerk mail copies to:
Prosecutor's office
Defense Attorney
Defendant

Filed for Record 29 day of Jan 2018 at 37
Martha J. Smith, Circuit Clerk
By  Deputy Clerk

IN THE CIRCUIT COURT OF CLARK COUNTY, ARKANSAS
Criminal Division

ORDER DENYING PETITION TO CORRECT ILLEGAL SENTENCE

Came on for consideration, Defendant's Petition to Correct Illegal Sentence, and the Court having considered the pleadings, arguments, authorities and matters presented, the Court hereby finds and orders that Defendant has failed to demonstrate that the sentence entered illegal and failed to present otherwise cognizable claims for such relief and is therefore **DENIED**.

IT IS SO ORDERED

Hon. Greg Vardaman

Date

File for Record 28 day of March, 2018 at 12:19 o'clock
By Martha J. Smith, Circuit Clerk Deputy Clerk

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