

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 22-12136-F

NOEL K. BANGO,

Petitioner - Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ORDER:

Noel Bango moves for a certificate of appealability ("COA") and leave to proceed on appeal *in forma pauperis* ("IFP"), in order to appeal the denial of his 28 U.S.C. § 2254 petition for writ of habeas corpus. To merit a COA, Bango must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). Because Bango has failed to satisfy the second prong of *Slack's* test, his motion for a COA is DENIED, and his motion for leave to proceed on appeal IFP is DENIED AS MOOT.

/s/ Charles R. Wilson
UNITED STATES CIRCUIT JUDGE

Appendix "A"

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Petitioner - Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

Before: WILSON and LAGOA, Circuit Judges.

BY THE COURT:

Noel Bango has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's December 14, 2022, order denying a certificate of appealability, and denying as moot Bango's motion for leave to proceed *in forma pauperis*, following the dismissal of his 28 U.S.C. § 2254 habeas corpus petition. Upon review, his motion for reconsideration is DENIED because he has offered no meritorious arguments to warrant relief.

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-80692-CV-ROSENBERG

NOEL K. BANGO,

Petitioner,

v.

RICKY D. DIXON, SECRETARY,
FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

ORDER DENYING MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

THIS CAUSE is before the Court on Petitioner Noel K. Bango's *pro se* Motion to Proceed *in Forma Pauperis* on Appeal ("IFP Motion"), docketed by the Clerk on June 28, 2022. DE 14. For the reasons set forth below, the IFP Motion is **DENIED**.

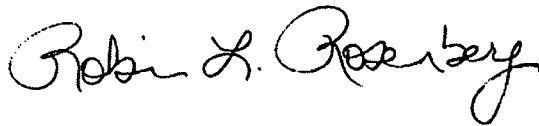
Applications to appeal *in forma pauperis* are governed by 28 U.S.C. § 1915 and Federal Rule Appellate Procedure 24. A court of the United States may authorize a party to proceed *in forma pauperis* ("IFP") upon an affidavit of indigency. See 28 U.S.C. § 1915(a); Fed. R. App. P. 24(a)(1). An appeal, however, "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); accord Fed. R. App. P. 24(a)(3)(A). A party who seeks appellate review of an issue does so in good faith if the issue is not frivolous from an objective standard. See *Coppedge v. United States*, 369 U.S. 438, 445 (1962). An IFP application is frivolous "if it is without arguable merit either in law or fact." *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002). Alternatively, where a claim is arguable,

Appendix "C"

but ultimately will be unsuccessful, it should be allowed to proceed. *See Cofield v. Ala. Pub. Serv. Comm'n*, 936 F.2d 512, 515 (11th Cir. 1991).

Petitioner has filed a Notice of Appeal and IFP Motion following entry of the Court's May 13, 2022 Order dismissing his § 2254 Petition as premature. DE 13, 14. After review of the record, the Court finds there are no non-frivolous issues which Petitioner could potentially raise in an appeal. Accordingly, it is **ORDERED AND ADJUDGED** that the Petitioner's IFP Motion is **DENIED**.

DONE AND ORDERED in Chambers at West Palm Beach, Florida this 29th day of June, 2022.



ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

cc:

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