

19
ALD-147

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 23-1491

DOUGLAS MANNING, Appellant

VS.

ADMINISTRATOR EAST JERSEY STATE PRISON, et al.

(D.N.J. Civ. No. 2:23-cv-00279)

Present: HARDIMAN, RESTREPO, and BIBAS, Circuit Judges

Submitted are:

- (1) By the Clerk for possible summary action pursuant to 3rd Circuit Local Appellate Rule 27.4 and Chapter 10.6 of the Court's Internal Operating Procedures, for a decision on the issuance of certificate of appealability, and for possible dismissal due to a jurisdictional defect;
- (2) Appellant's document in support of appeal, filed on March 24, 2023;
- (3) Appellant's document in support of appeal, filed on April 5, 2023;
- (4) Appellant's amended habeas petition, filed on April 14, 2023;
- (5) Appellant's document in support of appeal, filed on April 24, 2023;
- (6) Appellant's amended habeas petition, filed on April 24, 2023

in the above-captioned case.

Respectfully,

Clerk

(Continued)

Opinion Below Appendix A Page 251

e.g pp 10 of 2

e.g PP20f2

DOUGLAS MANNING, Appellant
VS.
ADMINISTRATOR EAST JERSEY STATE PRISON, et al.
23-1491
Page 2

ORDER

The District Court denied Appellant's motion to proceed in forma pauperis (IFP) because he was financially ineligible. Thereafter, Appellant paid the \$5 filing fee and appealed the denial of the IFP motion. Appellant's amended petition under 28 U.S.C. § 2254 is now pending in the District Court. Generally, "an order denying leave to proceed [IFP] is a final, collateral order appealable under 28 U.S.C. § 1291." Abdul-Akbar v. McKelvie, 239 F.3d 307, 311 (3d Cir. 2001) (en banc). But an order denying an IFP motion is not final and appealable when, as here, the order "may be challenged on appeal from [the final] judgment." In re Diet Drugs Prod. Liab. Litig., 418 F.3d 372, 377 (3d Cir. 2005); Redmond v. Gill, 352 F.3d 801, 803 (3d Cir. 2003) (per curiam). Accordingly, the appeal is dismissed for lack of appellate jurisdiction.

By the Court,

s/L. Felipe Restrepo
Circuit Judge

Dated: June 1, 2023
Tmm/cc: Douglas Manning
Melissa H. Raksa, Esq.



A True Copy:

Patricia A. Dodszeit

Patricia S. Dodszeit, Clerk
Certified Order Issued in Lieu of Mandate

Opinion Below Appendix A Page as 1

e.g

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DOUGLAS MANNING,

Petitioner,

v.

PATRICK NOGAN, *et al.*,

Respondents.

Case No. 2:23-cv-279 (BRM)

ORDER

THIS MATTER is opened to the Court by *pro se* Petitioner Douglas Manning (“Petitioner”) upon the filing of a federal habeas petition pursuant to 28 U.S.C. § 2254 (ECF No. 1) and an application to proceed *in forma pauperis* in this habeas matter. (ECF No. 1-1.)

Pursuant to Local Civil Rule 81.2(b), a prisoner seeking to bring a habeas petition *in forma pauperis* must submit both a detailed affidavit indicating his inability to pay the filing fee and “a certification signed by an authorized officer of the institution [in which he is detained] certifying (1) the amount presently on deposit in the prisoner’s prison account and, (2) the greatest amount on deposit in the prisoner’s prison account during the six month period prior to the date of the certification.” Where that account statement indicates that a habeas petitioner’s accounts have exceeded \$200 during the last six months, he “shall not be considered eligible to proceed *in forma pauperis*.” According to the certification Petitioner has provided, Petitioner’s account has exceeded \$200 within the last six months, having a balance of \$934.70. (See ECF No. 1-1.) As Petitioner’s account has exceeded \$200 in the last six months, he is not eligible to proceed *in forma pauperis* in this matter and must instead pay the \$5 filing fee to the extent he wishes to proceed with his petition. Accordingly,

Opinion Below Appendix C Page as 1

Constitutional and statutory Provision involved Appendix D Page as 2

IT IS on this 31st day of January 2023;

ORDERED that Petitioner's application to proceed *in forma pauperis* (ECF No. 1-1) is **DENIED**; and it is further

ORDERED that the Clerk of the Court shall **ADMINISTRATIVELY TERMINATE** this case; Petitioner is informed that administrative termination is not a "dismissal" for purposes of the statute of limitations, and that if the case is reopened, it is not subject to the statute of limitations time bar if it was originally filed timely; *see Jenkins v. Superintendent of Laurel Highlands*, 705 F.3d 80, 84 n.2 (2013) (describing prisoner mailbox rule generally); *Dasilva v. Sheriff's Dept.*, 413 F. App'x 498, 502 (3rd Cir. 2011) ("[The] statute of limitations is met when a complaint is submitted to the clerk before the statute runs"); and it is further

ORDERED that if Petitioner wishes to reopen this case, he shall so notify the Court, in writing, addressed to the Clerk of the Court, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101, within thirty (30) days of the date of entry of this Order; Petitioner's writing shall include the \$5 filing fee; and it is further

ORDERED that upon receipt of a writing from Petitioner stating that he wishes to reopen this case, accompanied by the filing fee, the Clerk of the Court will be directed to reopen this case; and it is finally

ORDERED that the Clerk of the Court shall serve a copy of this Order upon Petitioner by regular U.S. mail.

/s/Brian R. Martinotti
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE

e.g pp 1 of 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DOUGLAS MANNING,

Petitioner,

v.

PATRICK NOGAN, et al.,

Respondents.

Civil Action No. 23-279 (BRM)

ORDER

THIS MATTER is opened to the Court by *pro se* Petitioner Douglas Manning (“Petitioner”) upon the filing of a federal habeas petition pursuant to 28 U.S.C. § 2254 (ECF No. 1). The Court previously administratively terminated this matter, finding Petitioner was not eligible to proceed *in forma pauperis* in this matter and instructing Petitioner to pay the \$5.00 filing fee if he wished to proceed. (See ECF No. 2.) Petitioner has paid the \$5.00 filing fee.

Having screened the Petition for summary dismissal pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts (“Habeas Rules”), the Court finds that the Petition fails to set forth any facts in support of his claims for relief, as required by Rule 2 of the Habeas Rules. For this reason, the Court will dismiss the petition without prejudice pursuant to Rule 4, and permit Petitioner to submit an Amended Petition within 30 days.

Habeas Rule 4 requires the district judge to review a petition upon filing and to *sua sponte* dismiss it without ordering a responsive pleading under certain circumstances:

The clerk must promptly forward the petition to a judge under the court’s assignment procedure, and the judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner

Jurisdiction APPENDIX D Page as 2

28 U.S.C. § 2254 Rule 4, applicable through Rule 1(b).

“Habeas corpus petitions must meet heightened pleading requirements.” *McFarland v. Scott*, 512 U.S. 849, 856 (1994). The Habeas Rules require the habeas petition to specify the grounds for relief, state the facts supporting each ground, and state the relief requested.¹ *See* 28 U.S.C. § 2254 Rule 2(c) & (d), applicable through Rule 1(b); *see also In re Advanta Corp. Sec. Litig.*, 180 F.3d 525, 534 (3d Cir. 1999) (explaining that “factual allegations” are descriptions of “the who, what, when, where, and how: the first paragraph of any newspaper story”).

“A prime purpose of Rule 2(c)’s demand that habeas petitioners plead with particularity is to assist the district court in determining whether the State should be ordered to ‘show cause why the writ should not be granted.’ [28 U.S.C.] § 2243. Under Habeas Corpus Rule 4, if ‘it plainly appears from the petition . . . that the petitioner is not entitled to relief in district court,’ the court must summarily dismiss the petition without ordering a responsive pleading.” *Breazeale v. Shultz*, No. 09-2118(NLH), 2009 WL 1438236, at *2 (D.N.J. May 19, 2009) (citing *Mayle v. Felix*, 545 U.S. 644, 655 (2005)); *see also McFarland v. Scott*, 512 U.S. 849, 856 (1994) (“Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face”); *United States v. Dawson*, 857 F.2d 923, 928 (3d Cir. 1988) (summary dismissal is warranted where the petition contains vague and conclusory allegations).

Here, Petitioner has alleged one ground for relief. Ground one argues “improper and excessive.” (ECF No. 1 at 6.) The Petition does not set forth any facts regarding the claim. Because

¹ *Pro se* pleadings are held to less stringent standards than more formal pleadings drafted by lawyers, *see Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Haines v. Kerner*, 404 U.S. 519, 520 (1972), and a *pro se* habeas petition must be construed liberally. *See Hunter v. DiSabato*, 308 F.3d 236, 243 (3d Cir. 2002). Nevertheless, a federal district court can dismiss a habeas corpus petition if it appears from the face of the petition that the petitioner is not entitled to relief. *See Denny v. Schult*, 708 F.3d 140, 148 n. 3 (3d Cir. 2013); *see also* 28 U.S.C. §§ 2243, 2255.

there are no factual allegations in the Petition, the Court finds that it fails to meet the requirements of Rule 2 and will dismiss the Petition without prejudice pursuant to Rule 4. Petitioner may submit an Amended Petition that complies with Rule 2 within 30 days of his receipt of this Order.

IT IS, on this 9th day of March 2023,

ORDERED the Clerk of the Court shall make separate entry marking this matter **RE-OPENED**; and it is further

ORDERED that, having screened the Amended Petition for dismissal pursuant to Rule 4 of the Rules Governing § 2254 Cases, the Court will dismiss the petition **WITHOUT PREJUDICE** for failure to comply with Rule 2(c) of the Rules Governing § 2254 Cases; and it is further

ORDERED the Clerk of the Court shall ADMINISTRATIVELY TERMINATE this matter; Petitioner is informed that administrative termination is not a “dismissal” for purposes of the statute of limitations, and that if the case is reopened, it is not subject to the statute of limitations time bar if it was originally filed timely, see *Papotto v. Hartford Life & Acc. Ins. Co.*, 731 F.3d 265, 275 (3d Cir. 2013) (distinguishing administrative terminations from dismissals); *Jenkins v. Superintendent of Laurel Highlands*, 705 F.3d 80, 84 n.2 (2013) (describing prisoner mailbox rule generally); *Dasilva v. Sheriff's Dep't.*, 413 F. App'x 498, 502 (3d Cir. 2011) (per curiam) (“[The] statute of limitations is met when a [motion] is submitted to the clerk before the statute runs”); and it is further

ORDERED the Clerk of the Court shall forward Petitioner (1) a copy of the instant Petition (ECF No. 1) and (2) a blank section 2254 form (AO 241 (modified): DNJ-Habeas-008 (Rev. 01-2014)); and it is further

ORDERED Petitioner may file an amended petition that complies with Rule 2(c) of the Rules Governing § 2254 cases within 30 days from his receipt of this Order; if Petitioner submits an amended petition within the timeframe specified by the Court, the Court will reopen the matter and screen the Petition pursuant to Rule 4 of the Rules Governing § 2254 Cases; and it is further

ORDERED the Clerk of the Court shall serve a copy of this Order upon Petitioner by regular U.S. mail and **CLOSE** this case accordingly.

/s/Brian R. Martinotti
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE

e.g

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

DOUGLAS MANNING,

Petitioner,

v.

PATRICK NOGAN, et al.,

Respondents.

Civil Action No. 23-279 (BRM)

ORDER

Pro se Petitioner Douglas Manning, an inmate at East Jersey State Prison, in Rahway New Jersey, submitted a notice of appeal of the Court's order denying his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (ECF No. 6.) Petitioner filed a motion for leave to proceed *in forma pauperis* ("IFP") on appeal. (ECF No. 8.) Because Petitioner's IFP application is not on the correct form, the application is denied without prejudice.

The Third Circuit Local Appellate Rule 24.1(c) requires Petitioner to file an affidavit of poverty on the form prescribed by the Federal Rules of Appellate Procedure. *See* L.A.R. 24.1(c) (Aug. 1, 2011) Pursuant to Federal Rule of Appellate Procedure 24(a)(1), this Court may grant a petitioner IFP status on appeal only where the petitioner shows, in the detail required by Form 4 of the Appendix of Forms, that he is unable to pay or to give security for the fees and costs on appeals, and states the issues that he intends to present on appeal.¹

Here, Petitioner failed to include the proper form prescribed by the Federal Rule of Appellate Procedure. Moreover, he does not include the issues he intends to appeal. As such, I will

¹ There are exceptions for those litigants who were permitted to proceed *in forma pauperis* ("IFP") in the district court action or were determined to be financially unable to obtain an adequate defense in a criminal case. Neither exception applies here.

constitutional and statutory provision involved
Appendix D Page 2

deny the IFP application without prejudice. The Court will direct the Clerk of the Court to send Petitioner the appropriate forms, and he may resubmit his motion to appeal IFP within 30 days of the date of this Order.

IT IS on this 30th day of March 2023,

ORDERED that the Clerk of Court shall re-open this matter solely for the purposes of this Order; and it is further

ORDERED that Plaintiff's IFP application (ECF No. 8) is **DENIED WITHOUT PREJUDICE**; and it is further

ORDERED that within 30 days of the date of this Order, Petitioner may resubmit his application to proceed IFP on appeal on the proper form; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Order upon Petitioner, together with a blank copy of the Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis ("Affidavit")², by regular mail, and shall **CLOSE** this file.

/s/ Brian R. Martinotti
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE

² Available at http://www2.ca3.uscourts.gov/legacyfiles/ifp_affidavit.pdf

Constitutional and statutory Provision, involved
Appendix D Page 452