

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANKLIN JOHONOSON : CIVIL ACTION
 :
 v. :
 :
 RAYMOND J. SOBINA, et al. : No. 98-1874

MEMORANDUM ORDER

J. M. KELLY, J.

JUNE 25, 2001

Presently before the Court is an Affidavit for Continuance of In Forma Pauperis Upon Appeal, which was filed by the Petitioner, Franklin Johonoson ("Johonoson"). Johonoson filed his Petition for Writ of Habeas Corpus on April 8, 1998. On April 22, the Court granted Johonoson leave to proceed in forma pauperis. On November 11, 1998, the Court dismissed his Petition. On May 3, 1999, Johonoson filed his second Petition for Writ of Habeas Corpus, which the Court dismissed without prejudice. After Johonoson eventually refiled his second Petition, the Court denied it on May 29, 2001. On June 14, 2001, Johonoson filed a Notice of Appeal and also filed, with this Court, the instant Affidavit for Continuance of In Forma Pauperis Upon Appeal.

Petitioners for habeas corpus relief may, if the district court denies their petition, appeal that denial to the appropriate appellate court. See 28 U.S.C. § 2253 (1994); Fed. R. App. P. 22(a). Generally, "any court of the United States may authorize the commencement, prosecution or defense of any . . .

appeal . . . without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor." 28 U.S.C. § 1915(a)(1) (1997). A party that desires to proceed in forma pauperis on an appeal from a habeas corpus ruling must typically file a motion with the district court and attach an affidavit explaining why the court should allow him to do so. See Fed. R. App. P. 24(a)(1). That requirement is waived, however, when that same party had received prior approval to proceed in forma pauperis. Federal Rule of Appellate Procedure 24(a)(3) states:

A party who was permitted to proceed in forma pauperis in the district court action . . . may proceed on appeal in forma pauperis without further authorization, unless the district court - before or after the notice of appeal is filed - certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis.

Fed. R. App. P. 24(a)(3).

In this case, the Court granted Johonson permission to proceed in forma pauperis on April 22, 1998. Never since has the Court found that Johonson is not entitled to proceed in forma pauperis.¹ Johonson therefore remains eligible to proceed in forma pauperis. See id.; see also Oatess v. Sobolevitch, 914 F.2d 428, 430 n.4 (3d Cir. 1990) ("Normally, when a litigant is granted leave to proceed in forma pauperis by the district court,

¹ The Court takes no position at this time on whether Johonson's Appeal is taken in bad faith.

this status carries over in the Court of Appeals.").
Accordingly, it is **ORDERED** that Johonoson's Affidavit for
Continuance of In Forma Pauperis Upon Appeal is **DENIED** as
superfluous.

BY THE COURT:

JAMES MCGIRR KELLY, J.