

certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253.

Bickerstaff has failed to make a substantial showing of the denial of a constitutional right. As discussed in its July 16, 1998 Memorandum and Order, Bickerstaff brought his petition seeking relief for his denial of parole. A parole board's decision may only be reviewed when it relies on factors outside its discretion. Weaver v. Pennsylvania Bd. of Probation and Parole, 688 A.2d 766, 775 (Pa. Commw. Ct. 1997). Because Bickerstaff failed to address the proper state court for relief, the court dismissed Bickerstaff's petition for failure to exhaust state remedies. See Preiser v. Rodriguez, 411 U.S. 475, 494-95 (1973) (requiring prisoner to exhaust state remedies). Exhaustion of state remedies aside, Bickerstaff still raised no substantial showing of a denial of a constitutional right. Bickerstaff's petition stated that his First, Fifth, Eighth and Fourteenth Amendment rights were violated by his being denied access to the courts, denied due process, subjected to cruel and unusual punishment and denied equal protection. Bickerstaff, however, provided no facts to support these claims. First, because there is no right to judicial review of a legitimate parole board decision, Bickerstaff could not be denied access to the courts under the First Amendment. Second, an Eighth Amendment claim for cruel and unusual punishment cannot be based merely on a prisoner's feeling that he was unfairly denied

parole. Last, Bickerstaff's feeling that he was entitled to parole based on his completion of a number of prison programs raises no constitutional due process or equal protection issues. None of these assertions amount to a substantial showing of a denial of a constitutional right. Therefore, the court will deny the motion for issuance of a certificate of appealability.

As to Bickerstaff's motion to proceed in forma pauperis on appeal pursuant to Fed. R. App. P. 24, the court will grant the motion. Bickerstaff has indicated his desire to appeal the court's July 16, 1998 Memorandum and Order and has supplied the information required by Rule 24. Upon consideration of Bickerstaff's submissions, the court is satisfied that he is entitled to proceed in forma pauperis.¹

Bickerstaff's final motion is for an order directing the Clerk of Court to prepare and transmit the record in this case for purposes of appeal. On August 18, 1998, the record was certified and transmitted on appeal to the United States Court of Appeals for the Third Circuit. Thus, Bickerstaff's motion will be denied as moot.

For the reasons set forth above, IT IS ORDERED that:

(1) Bickerstaff's motion for a certificate of appealability is DENIED;

(2) Bickerstaff's motion to proceed in forma pauperis is

¹ Bickerstaff need not meet the filing fee payment requirements of 28 U.S.C. § 1915(b) because they do not apply to habeas corpus petitions or to appeals from the denial of such petitions. Santana v. United States, 98 F.3d 752 (3d Cir. 1996).

GRANTED; and

(3) Bickerstaff's motion to prepare and transmit the record for appeal is DENIED as moot.

LOUIS C. BECHTLE, J.