

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

BRIAN KEITH McGILL, )  
)  
Petitioner, )  
)  
VS. )  
)  
NATHANIEL QUARTERMAN, Director, )  
Texas Department of Criminal Justice, )  
Correctional Institutions Division, )  
)  
Respondent. )

CIVIL ACTION NO.

3:08-CV-0737-G

ECF

**ORDER OF THE COURT ON THE COA RECOMMENDATION**

Considering the record in this case and the magistrate judge’s recommendation, and pursuant to Federal Rule of Appellate Procedure 22(b) and 28 U.S.C. § 2253 (c), the court hereby finds and orders:

**IFP STATUS:**

- (X) the party appealing is **GRANTED** *in forma pauperis* status on appeal.
- ( ) the party appealing is **DENIED** *in forma pauperis* status on appeal for the following reasons:
- ( ) the Court certifies, pursuant to FED. R. APP. P. 24(a) and 28 U.S.C. § 1915 (a)(3), that the appeal is not taken in good faith. In support of this finding, the court adopts and incorporates by reference the magistrate judge’s findings and recommendation entered in this case on \_\_\_\_\_ . Based upon the magistrate judge’s findings, this court finds that the appeal presents no legal points of arguable merit and is therefore frivolous. See *Harkins v. Roberts*, 935 F. Supp. 871, 873

(S. D. Miss. 1996) (citing *Howard v. King*, 707 F. 2d 215, 219-20 (5th Cir. 1983)).

- ( ) the person appealing is not a pauper;
- ( ) the person appealing has not complied with the requirements of Rule 24 of the Federal Rules of Appellate Procedure and /or 28 U.S.C. § 1915(a)(1) as ordered by the court. (See Notice of Deficiency and Order entered on \_\_\_\_\_).

**COA:**

- ( ) a Certificate of Appealability is GRANTED on the following issues: \_\_\_\_\_
- (X) a Certificate of Appealability is **DENIED**. The court hereby adopts and incorporates by reference the magistrate judge's findings and recommendation entered in this case on May 21, 2008, in support of its finding that petitioner has failed to obtain leave of the Fifth Circuit Court of Appeals to file a subsequent § 2254 petition. See *Tolliver v. Dobre*, 211 F.3d 876 (5th Cir. 2000).

August 11, 2008.

  
\_\_\_\_\_  
A. JOE FISH  
Senior United States District Judge