

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH  
DAKOTA, CENTRAL DIVISION

Bruce Edgar Smith v. South Dakota Board of Pardons and Paroles;  
Alejandro Reyes

No. 3:25-CV-03003-ECS · No. No. 3:25-CV-03003-ECS · Decided November 25, 2025

SUMMARY

The United States District Court for the District of South Dakota granted Bruce Edgar Smith’s motion to proceed in forma pauperis on appeal from the dismissal of his successive habeas corpus petition. The court found that Smith could not afford the appellate filing fee and that his appeal appeared to be taken in good faith.

CASE DETAILS

|                    |                                                                                                                                                                                                        |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | United States District Court for the District of South Dakota, Central Division                                                                                                                        |
| JURISDICTION       | United States District Court for the District of South Dakota, Central Division                                                                                                                        |
| DECIDED            | November 25, 2025                                                                                                                                                                                      |
| DOCKET             | No. 3:25-CV-03003-ECS                                                                                                                                                                                  |
| DISPOSITION        | other                                                                                                                                                                                                  |
| PROCEDURAL POSTURE | After dismissing Smith's successive habeas petition without prejudice and denying a certificate of appealability, the district court considered Smith's motion to proceed in forma pauperis on appeal. |
| STANDARD OF REVIEW | The court assessed whether Smith could afford the appellate filing fee and whether his appeal was taken in good faith under 28 U.S.C. § 1915(a)(1) and (3).                                            |
| PRECEDENTIAL VALUE | Unpublished district court order; nonprecedential                                                                                                                                                      |
| PARTIES            | Bruce Edgar Smith v. South Dakota Board of Pardons and Paroles, Alejandro Reyes                                                                                                                        |

TOPICS

- federal habeas corpus
- appellate procedure
- post-conviction relief
- civil procedure

## PRACTICE AREAS

Federal habeas corpus

Appellate procedure

In forma pauperis proceedings

## QUESTIONS PRESENTED

1. Whether Smith should be permitted to proceed in forma pauperis on appeal under 28 U.S.C. § 1915(a) (1) and (3).

## HOLDINGS

1. Smith may proceed in forma pauperis on appeal because he demonstrated that he could not afford the appellate filing fee and his appeal appeared to be taken in good faith.

## KEY QUOTATIONS

*“To determine whether a habeas petitioner qualifies for in forma pauperis status, the Court need only assess (1) whether the petitioner can afford to pay the full filing fee, and (2) whether the petitioner’s appeal is taken in “good faith.””*

## FACTUAL BACKGROUND

Smith is incarcerated at Mike Durfee State Prison and filed a pro se § 2254 habeas petition. He sought to appeal the dismissal of his petition as a successive habeas petition filed without authorization from the Eighth Circuit. Smith represented that he could not afford the \$605 appellate filing fee, and available prisoner trust-account reports showed a significant negative balance over the preceding six months.

## PROCEDURAL HISTORY

Smith filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254. A magistrate judge recommended dismissal as a second or successive petition or transfer to the Eighth Circuit; the district court adopted the recommendation, dismissed the petition without prejudice for lack of authorization to file a successive petition, denied other motions as moot, and denied a certificate of appealability. After Smith filed a notice of appeal, he moved to proceed in forma pauperis on appeal, which the court granted.

## DISPOSITION

other

## CASES CITED

- Malave v. Hedrick, 271 F.3d 1139, 1140 (8th Cir. 2001) (per curiam)
- Smith v. SD Board of Pardons & Paroles, No. 4:25-CV-04214-ECS, Doc. 6 (D.S.D. Nov. 17, 2025)

## OPINION

UNITED STATES DISTRICT COURT DISTRICT OF SOUTH DAKOTA CENTRAL DIVISION  
BRUCE EDGAR SMITH, 3:25-CV-03003-ECS Petitioner, ORDER GRANTING MOTION TO

vs. PROCEED IN FORMA PAUPERIS ON APPEAL SOUTH DAKOTA BOARD OF PARDONS AND PAROLES; ALEJANDRO REYES, Respondents, Petitioner, Bruce Edgar Smith, an inmate at Mike Durfee State Prison, filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Doc. 1. Magistrate Judge Mark A. Moreno issued a report and recommended that Smith's petition be dismissed as a second or successive habeas petition or, in the alternative, transferred to the United States Court of Appeals for the Eighth Circuit. Doc. 13 at 2-3. This Court overruled Smith's objections, adopted the report and recommendation, and dismissed without prejudice Smith's petition for writ of habeas corpus because Smith had not obtained permission from the United States Court of Appeals for the Eighth Circuit to file a successive writ of habeas corpus.

Doc. 43 at 3. The Court denied Smith's other motions, including his motion to proceed in forma pauperis in district court, as moot. The Court denied a certificate of appealability because Smith did not make a substantial showing of the denial of a constitutional right. *Id.* at 3-4. Smith has filed a notice of appeal, Doc. 46, and moves for leave to proceed in forma pauperis on appeal, Doc.

47. The United States Court of Appeals for the Eighth Circuit historically has looked to district courts to rule on in forma pauperis motions for appeal and has held that the filing-fee provisions of the Prison Litigation Reform Act do not apply to habeas corpus actions. *Malave v. Hedrick*, 271 F.3d 1139, 1140 (8th Cir. 2001) (*per curiam*).

To determine whether a habeas petitioner qualifies for in forma pauperis status, the Court need only assess (1) whether the petitioner can afford to pay the full filing fee, and (2) whether the petitioner's appeal is taken in "good faith." 28 U.S.C. § 1915(a)(1), (3).

Here, Smith's appeal appears to be taken in good faith. Smith's motion to proceed in ' forma pauperis demonstrates that he cannot afford to pay the \$605.00 appellate filing fee. Doc. 47. Although Smith did not file a prisoner trust account report along with his motion to proceed in forma pauperis, he stated in a letter to the Court that he is having difficulty obtaining a completed prisoner trust account report.

Doc. 45. Further, when Smith filed his habeas petition, he submitted a prisoner trust account report indicating that he has a significant negative balance and has had a significant negative balance for the past six months. Doc. 3. Recently, Smith commenced another action in the District of South Dakota, and the prisoner trust account report he submitted also indicates that he has a significant negative balance and has had a significant negative balance for the past six months.

*Smith v. SD Board of Pardons & Paroles*, No. 4:25- CV-04214-ECS, at Doc. 6 (D.S.D. Nov. 17, 2025). For these reasons, Smith's motion for leave to proceed in forma pauperis on appeal, Doc

77, is granted. Dated this 2<sup>nd</sup> Day of November, 2025. BY THE COURT: UNITED STATES  
DISTRICT JUDGE

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