

**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

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 2nd Day of November, 2025. BY THE COURT: UNITED STATES DISTRICT JUDGE