

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

UNITED STATES OF AMERICA,

-vs-

Case No. 6:13-cr-195-28GJK

DAVID MICHAEL MUHLEMAN,

Defendant.

REPORT AND RECOMMENDATION

This cause came on for consideration without oral argument on the following motion:

**MOTION: APPLICATION TO PROCEED IN DISTRICT COURT
WITHOUT PREPAYMENT OF FEES OR COSTS**

(Doc. No. 40)

FILED: October 29, 2018

THEREON it is RECOMMENDED that the motion be DENIED.

On October 29, 2018, David Michael Muhleman (“Defendant”), a federal prisoner, filed a motion for leave to appeal in forma pauperis (the “Motion”). Doc. No. 40. Defendant is appealing the Court’s Order denying his motion for change of venue. Doc. No. 38.

In the affidavit accompanying the Motion, Defendant states that he received \$40,800 during the past twelve months. Doc. No. 40-1 at 2. He also states that he receives monthly payments of \$3,400 from a disability pension.¹ Doc. No. 40 at 1. Defendant does not list any

¹ The Court considers disability benefits in determining whether the movant is a pauper. *See, e.g., Trimble v. Volz*, Case No. 2:08-cv-417-FtM-99DNF, 2008 WL 4490181, at *3 (M.D. Fla. Sept. 30, 2008) (indicating that a court can consider “income from Social Security and other disability benefits” when determining whether the movant is a pauper); *Miller v. United States Postal Serv.*, Case No. 8:13-CIV-952-T-17-AEP, 2013 WL 2250211, at *1 (M.D. Fla. May 22, 2013) (considering movant’s receipt of disability payments in determining whether she was a pauper).

dependents, but does state that he has a spouse. Doc. No. 40-1 at 5. The poverty guideline updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2) for 2018 for a household of two is \$16,460. U.S. Dep't of Health & Human Servs., <https://aspe.hhs.gov/poverty-guidelines> (last visited October 31, 2018).² Considering that Defendant's pension is more than double the Federal Poverty Guideline, under no reasonable standard can Defendant be considered a pauper.³

Accordingly, it is recommended that the Motion (Doc. No. 40) be **DENIED**.

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. Failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. 11th Cir. R. 3-1.

RECOMMENDED in Orlando, Florida, on October 31, 2018.



GREGORY J. KELLY
UNITED STATES MAGISTRATE JUDGE

Copies to:

Presiding District Judge
Counsel of record
Unrepresented parties
Courtroom Deputy

² Because Defendant is currently incarcerated, it is arguable that the guidelines for a household of two should not be applied, but the guideline for a household of one (\$12, 140) is even less than the amount for a household of two. U.S. Dep't of Health & Human Servs., <https://aspe.hhs.gov/poverty-guidelines> (last visited October 31, 2018).

³ As Defendant is not a pauper, the question of whether the appeal is being taken in good faith is not reached. *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.").