

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

CARL CHRISTOPHER,

Petitioner,

v.

Case No: 2:16-cv-439-FtM-38MRM

STATE OF FLORIDA,

Respondent.

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**OPINION AND ORDER**<sup>1</sup>

Petitioner sent a letter to the Clerk ([Doc. 11-3 at 1](#)) attaching a “Letter of Plea” ([Doc. 11-3 at 3](#)) on August 8, 2018. According to his letter, Petitioner seeks a review of his case by the United States Supreme Court but states he first must file an appeal with the Court of Appeals. [Doc. 11-3 at 1](#). The Court liberally construes the Letter of Plea as a notice of appeal. On November 18, 2016, the Court dismissed Petitioner’s Petition filed pursuant to [28 U.S.C. § 2254](#) as successive, and judgment was entered the same day. See [Doc. 8](#), [Doc. 9](#).

Because the Court lacks jurisdiction to consider a successive petition, the Court lacks jurisdiction to grant a COA. See [28 U.S.C. § 2253\(c\)](#); [Boone v. Sec’y, Dep’t of Corr.](#), [377 F.3d 1315, 1317 \(11th Cir. 2004\)](#); see also [Scotton v. U.S.](#) 2017 WL 7511339 \*2

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(11th Cir. 2017). Nonetheless, because the Court's November 18, 2016, Order is a final order, Petitioner may seek review pursuant to 28 U.S.C. § 1291. However, to the extent Petitioner wishes to appeal any final orders entered by the Court, he is required to file "a notice of appeal with the district clerk within the time allowed by Rule 4." Fed. R. App. P. 3(a)(1). Petitioner had "30 days after entry of judgment" to file his notice of appeal. Fed. R. App. P. 4(a)(1)(A). Consequently, Petitioner's appeal is untimely.

Petitioner did not accompany his pleading with a request to proceed on appeal *in forma pauperis*. A review of the docket reveals that Petitioner paid the filing fee in this case at the time of filing and, based upon the address of record, Petitioner is no longer incarcerated on his conviction. Given that any appeal of this matter is untimely, the Court, finds that the appeal in this case is not in good faith. Because the Court has certified that this appeal is not taken in good faith, Petitioner must pay the applicable \$505.00 appellate filing fee or file a request to proceed *in forma pauperis* directly with the Eleventh Circuit Court of Appeals. See Fed. R. App. P. 24(a)(5).

Accordingly, it is hereby

**ORDERED:**

In an abundance of caution, pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(4), the Court certifies that this appeal is not taken in good faith and the **Clerk** shall immediately forward a copy of this Order to the Clerk for the United States Court of Appeals for the Eleventh Circuit and to Petitioner at both the address of record and the return address on the envelope containing the notice of appeal.<sup>2</sup>

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<sup>2</sup> The docket reflect the address of record as provided by Petitioner in his Notice of Change of Address filed on December 6, 2016 (Doc. 10) as: 1771 53rd Lane, S.W. Naples, FL 34116. The Court, however, notes that the return address on the envelope

**DONE** and **ORDERED** in Fort Myers, Florida this 13th day of August 2018.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

SA: FTMP-1

Copies: All Parties of Record

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containing Petitioner's notice of appeal ([Doc. 11-2](#)) is Florida State Prison. A review of the Department of Corrections Offender Network reveals that Petitioner was released from custody on November 16, 2016, but reincarcerated on March 23, 2018. Petitioner is advised that if he wishes to change his address of record he must file a Notice of Change of Address.