

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JOSE A. REYES RAMOS,

Petitioner,

v.

Case No.: 2:22-cv-419-SPC-NPM

SECRETARY, FLORIDA
DEPARTMENT OF
CORRECTIONS,

Respondent.

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OPINION AND ORDER

Before the Court is Petitioner Jose A. Reyes Ramos's Motion to Hear and Rule on Petitioner's Motion to Proceed In Forma Pauperis (Doc. 34). The Court dismissed Reyes Ramos's petition for a writ of habeas corpus as untimely and denied him a certificate of appealability. (*See* Doc. 23). Reyes Ramos sought to appeal that decision, and the Eleventh Circuit dismissed the appeal for want of prosecution. (*See* Doc. 32). The Eleventh Circuit denied Reyes Ramos's motion to reinstate the appeal because he has not cured the deficiencies that led to the dismissal. One of those deficiencies was Reyes Ramos's failure to pay the filing and docketing fees or move to proceed *in forma pauperis*. Reyes Ramos is now attempting to cure that deficiency.

An individual seeking to appeal *in forma pauperis* must submit a statement of good faith on the issues he appeals. Fed. R. Civ. P. 24(a)(1)(C). The statement lets the district court decide whether the appeal is frivolous or not taken in good faith.

Reyes Ramos explained his intended position on appeal in an Application for Certificate of Appealability (Doc. 26)—he argues the Court should have applied equitable tolling. But the Application describes an argument Reyes Ramos did not preserve for appeal. The only period Reyes Ramos asked this Court to equitably toll was a July 4th weekend that impaired his ability to send mail. The Court found that argument futile because Reyes Ramos’s petition would be untimely even if the Court tolled the limitations period for the July 4th weekend. Reyes Ramos wants to argue on appeal that the Court should have equitably tolled a longer time period because of his state post-conviction counsel gave him bad legal advice. That argument is not preserved for appeal. *See Hurley v. Moore*, 233 F.3d 1295, 1298 (11th Cir. 2000) (“Arguments raised for the first time on appeal are not properly before this Court.”).

The only issue Reyes Ramos intends to raise on appeal is not preserved for appeal, so the Court finds he has presented no meritorious issues to raise on appeal and is not taking the appeal in good faith. Because the Court certifies the appeal is not taken in good faith, any request to proceed *in forma*

pauperis must be sent directly to the Eleventh Circuit. See Fed. R. App. 24(a)(5).

Accordingly, it is now

ORDERED:

Petitioner Jose A. Reyes Ramos's Motion to Hear and Rule on Petitioner's Motion to Proceed In Forma Pauperis (Doc. 34) is **DENIED**. The Clerk is **DIRECTED** to send a copy of this Order to the Eleventh Circuit.

DONE and **ORDERED** in Fort Myers, Florida on October 22, 2024.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1

Copies: All Parties of Record