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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

David Paul Stocks,)	CV 03 1510-PHX-ROS
Petitioner-Appellant,)	ORDER
vs.)	
Dora B. Schriro, et al.)	
Respondent-Appellee.)	

Pending is a referral from the Ninth Circuit for the purpose of determining whether the Petitioner's appeal has been taken in good faith or is frivolous pursuant to 28 U.S.C. § 1915(a)(3). For the reasons set forth below, the Court finds that the appeal is frivolous and not taken in good faith.

DISCUSSION

Under 28 U.S.C. § 1915(a), an appeal is in "good faith" so long as it seeks review of any issue that is not "frivolous." Coppedge v. United States, 369 U.S. 438, 444-45 (1962); Gardner v. Pogue, 558 F.2d 548, 551 (9th Cir. 1977). An issue is frivolous if it has "no arguable basis in fact or law." O'Loughlin v. Doe, 920 F.2d 614, 617 (9th Cir. 1990). The term "frivolous" includes "not only the inarguable legal conclusion, but also the fanciful factual allegation." Neitzke v. Williams, 490 U.S. 319, 325 (1989).

1 Petitioner was convicted of forgery and fraudulent schemes and artifices, sentenced to 15
2 years of prison, and ordered to pay \$3,500 in restitution. [Doc. #12, Ex. E, pp. 143-144; Doc.
3 #11, Ex. A, p. 156; Doc. #13, Ex. X, pp. 6-7; Doc. #13, Ex. G; Doc. #13, Ex. K].¹ On
4 October 20, 2005 the Court adopted in part and rejected in part Magistrate Judge Anderson's
5 Report and Recommendation and dismissed Petitioner's Petition For Writ of Habeas Corpus,
6 which was filed on August 6, 2003, pursuant to 28 U.S.C. § 2254. (Doc. #30). In doing so,
7 the Court addressed each of Petitioner's objections regarding his ineffective assistance of
8 counsel claims (Claims I through IV), Brady Claim (Claim V), and insufficient evidence
9 claims (Claim VI and VII).

10 With respect to the ineffective assistance of counsel claims, the Court found that Petitioner
11 could not meet his burden under Strickland v. Washington, 466 U.S. 668 (1984). With
12 respect to the Brady Claim, the Court found that the claim failed on the merits and agreed
13 with Judge Anderson's conclusion that "even if the Petitioner could establish that the
14 photograph existed and that it did not resemble Petitioner, 'that would not overcome the
15 overwhelming evidence . . . ' that would warrant a violation of Brady." (Doc. #30, p. 16-17).
16 With respect to Petitioner's claim that there was insufficient evidence of the "benefit" element
17 of the fraudulent schemes count, the Court found that the record includes circumstantial
18 evidence suggesting Petitioner benefitted from the fraudulent scheme and artifice, which is
19 sufficient to support the jury's finding that Petitioner benefitted from cashing the checks and
20 is permissible under A.R.S. § 13-502(2). (Id., p. 17). Petitioner also alleged insufficient
21 evidence of a prior conviction; however, the Court found that under 28 U.S.C. § 2254(d), the
22 state's decision was not contrary to nor did it involve an unreasonable application of Jackson
23 v. Virginia, 443 U.S. 307, 319 (1979), which requires inquiry into "whether, after viewing
24 the evidence in the light most favorable to the prosecution, any rational trier of fact could
25 have found the essential elements of the crime beyond a reasonable doubt." Because this was
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27 ¹ The Court incorporates the background as set forth in its October 20, 2005
28 Order Adopting in Part and Rejecting in Part the Report and Recommendation. (Doc. #30)

1 sufficient proof under Ariz. R. Crim. P. 17.6, the Court found that the Arizona Court of
2 Appeals' decision was neither contrary to nor rested on an unreasonable application of
3 Jackson.


4 For these reasons, an appeal from the court's dismissal order could have no arguable basis
5 in fact or law. See Fed. R. Civ. P. 56(e). As a result, an appeal of this Court's Order would
6 be frivolous.

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8 Accordingly,

9 IT IS CERTIFIED that Petitioner's appeal is not taken in good faith and is frivolous.

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11 DATED this 17th day of October, 2006.

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Roslyn O. Silver
United States District Judge