

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

DEC 1 2004

PATRICK FISHER
Clerk

RAYMOND ARTHUR PRICE,

Plaintiff-Appellant,

v.

SUPT. REID, COLORADO
ATTORNEY GENERAL OFFICE,

Defendants-Appellees.

No. 04-1273

(D. Colorado)

(D.C. No. 04-ES-675)

ORDER

Before **KELLY, HENRY**, and **TYMKOVICH**, Circuit Judges.

Raymond Price, a state prisoner proceeding pro se, seeks a certificate of appealability (“COA”) to appeal the denial of his 28 U.S.C. § 2254 habeas petition. We deny his request for a COA and dismiss this matter.

Mr. Price filed a habeas petition and a motion for leave to proceed without prepayment of fees in the U.S. District Court for the District of Colorado. The magistrate judge found that Mr. Price could pay the \$5.00 fee, and ordered him to do so. On May 26, 2004, the district court overruled Mr. Price’s objections to the magistrate judge’s order and ordered Mr. Price to pay the \$5.00 filing fee within thirty days if he wished to pursue his claims in the underlying action. On July 9,

2004, the district court determined that Mr. Price failed to pay the \$5.00 fee and failed to respond in any way to the court's May 26, 2004 order. The district court dismissed the action without prejudice.

Before this court, Mr. Price seeks a COA so that he may appeal the federal district court's denial of his 28 U.S.C. § 2254 habeas corpus petition. *See* 28 U.S.C. § 2253(c)(1)(A) (providing that no appeal may be taken from the denial of a § 2254 habeas petition unless the petitioner first obtains a COA). Mr. Price also seeks to proceed in forma pauperis ("IFP") in this action.

Issuance of a COA is jurisdictional. *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). A COA can issue only "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327. After careful review of the record, we conclude the requirements for issuance of a COA have not been met.

Mr. Price's appeal of the district court's dismissal without prejudice for failure to pay the \$5.00 filing fee is frivolous. The district court gave Mr. Price an opportunity to respond to its May 26, 2003 order, and Mr. Price failed to do so. We deny his request for a COA, deny his motion to proceed IFP, order Mr. Price

to pay immediately any unpaid costs and fee due this court for this appeal, and
dismiss the matter.

Entered for the Court,

Robert H. Henry
Circuit Judge