

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

September 22, 2005

Clerk of Court

IVAN STAMPS,

Plaintiff-Appellant,

v.

STATE OF COLORADO,

Defendant-Appellee.

No. 05-1000
(District of Colorado)
(D.C. No. 04-Z-2072)

ORDER

Before **BRISCOE, LUCERO, and MURPHY**, Circuit Judges.

On October 7, 2004, Ivan Stamps filed a complaint in federal district court seeking to challenge the constitutionality of Colorado's mandatory parole statute pursuant to 28 U.S.C. § 1983. *See* Colo. Rev. Stat. § 18-1.3-401(1)(a)(V)(E).

The district court construed Stamps' complaint as an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and dismissed it without prejudice for failure to exhaust state remedies. Stamps challenges the characterization of his complaint and seeks to appeal its dismissal by the district court.

Because we conclude that the district court properly construed Stamps' complaint as a § 2254 habeas corpus application, Stamps cannot appeal the

district court's denial of that application until he obtains a certificate of appealability ("COA"). *See* 28 U.S.C. § 2253(c)(1)(A) (providing that no appeal may be taken from a final order disposing of a § 2254 petition unless the petitioner first obtains a COA). To be entitled to a COA, Stamps must show "that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 474, 484-85 (2000) (holding that when a district court dismisses a habeas petition on procedural grounds, a petitioner is entitled to a COA only if he shows both that reasonable jurists would find it debatable whether he had stated a valid constitutional claim and debatable whether the district court's procedural ruling was correct). Our review of the record demonstrates that the district court's dismissal of Stamps' § 2254 application is not deserving of further proceedings or subject to a different resolution on appeal. Accordingly, this court **denies** Stamps a COA and **dismisses** this appeal. Stamps' motion to proceed *in forma pauperis* on appeal is **granted**. All other outstanding motions are **denied**.

Entered for the Court
DOUGLAS E. CRESSLER, Acting Clerk of Court

By
Deputy Clerk