

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
	:	
v.	:	No. 17-cr-125-WES-PAS
	:	
THOMAS HAMMOND,	:	
Defendant.	:	

REPORT AND RECOMMENDATION

PATRICIA A. SULLIVAN, United States Magistrate Judge.

Defendant Thomas Hammond has appealed his conviction for attempted enticement of a minor to engage in illicit sexual activity. In connection with this direct appeal, he has asked the District Court for leave to appeal *in forma pauperis* (“IFP”). ECF No. 97. Defendant is now a prisoner and is seeking IFP status for the first time. At no time during the progress of this case in the District Court was Defendant determined to be financially eligible for court-appointed counsel. He maintains retained counsel and has already paid the appellate filing fee. The IFP motion has been referred to me.¹

Applications to appeal IFP are generally governed by 28 U.S.C. § 1915 and Fed. R. App. P. 24. Section 1915(a)(1) provides that “any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [individual] possesses that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1). Similarly, Federal

¹ I have addressed Defendant’s motion by report and recommendation because of the potential that an IFP denial can be dispositive. United States v. Vasquez, C.R. No. 07-125-01S, 2015 WL 10324731, at *1 (D.R.I. Dec. 14, 2015), adopted, 2016 WL 727164 (D.R.I. Feb. 23, 2016).

Rule of Appellate Procedure 24 provides, in part, that a “party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that . . . shows in the detail prescribed by Form 4 of the Appendix of Forms² the party’s inability to pay or to give security for fees and costs.” Fed. R. App. P. 24(a)(1)(A). That is, for a defendant who was not previously found by the district court to be eligible for IFP or for court-appointed counsel, to “qualify for IFP status on appeal, an appellant must submit financial information demonstrating that he . . . is indigent.” United States v. Shakal, Criminal No. 05-121(1) (DWF/JSM), 2010 WL 11537785, at *1 (D. Minn. Feb. 1, 2010).

Fatal to Defendant’s IFP motion is the information his application reveals about his financial circumstances. While Defendant avers that he “cannot afford prepayment of fees, costs, or security,” is not employed, has no income and owns no real estate, he also discloses ownership of a checking account with a substantial cash balance (in excess of \$80,000), as well as a substantial IRA account. ECF Nos. 97 at 1; 97-1. Regarding his financial commitments, Defendant discloses that he has no dependents and almost no monthly expenses and that he does not “expect any major changes to [his] monthly income or expenses or in [his] assets or liabilities during the next 12 months.” ECF No. 97-1 at 4. The application provides no explanation why, despite his ownership of such substantial resources, he is eligible to proceed *in forma pauperis* on appeal.

Based on the foregoing, I find that Defendant has “not demonstrated that his poverty is enough to outweigh the fairness to society which ultimately foots the bill” for IFP status. Merida v. Wall, C.A. No. 14-339 S, 2016 WL 1464551, at *1 (D.R.I. April 14, 2016) (internal quotation

² Defendant did not use the current Form 4 as prescribed by Fed. R. Civ. P. 24. This oversight has not impacted my recommendation.

marks omitted). Therefore, I recommend that the Court deny Defendant's motion to proceed IFP. Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days of its receipt. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
February 28, 2022