

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

STEPHEN R. MATTATALL	:	
	:	
v.	:	C.A. No. 17-00468-WES
	:	
ASHBEL T. WALL	:	

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

Pending before the Court is the Motion for Leave to Appeal In Forma Pauperis (“IFP”) filed by Petitioner. (ECF Doc. No. 24). Petitioner’s previous IFP Motion was denied because the District Court found that he had sufficient funds to pay the \$5.00 filing fee. (See ECF Doc. No. 7). Because I find that the appeal is groundless and thus not taken in good faith, I recommend that the District Court DENY the Motion.

Petitioner’s right to appeal in forma pauperis is governed by 28 U.S.C. § 1915 which provides that, “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). “Because the good faith standard is an objective one, an appeal is deemed not taken in good faith if the issues presented are frivolous. An appeal is considered frivolous when it is based on an ‘indisputably meritless legal theory or factual allegations that are clearly baseless.’” Lyons v. Wall, No. 04-380, 2007 WL 2067661 at *1 (D.R.I. July 13, 2007) (internal citations omitted).

In the present case, Chief Judge Smith found that the District Court lacks jurisdiction to consider Petitioner’s “second or successive” Petition because he failed to first obtain permission from the Court of Appeals to file it here. (ECF Doc. No. 20 at p. 8). Given the District Court’s

clear and undisputable finding that it lacks jurisdiction, I recommend the present IFP Motion (ECF Doc. No. 24) be DENIED because the appeal is groundless.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
April 5, 2019