

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT SUTTON,

Defendant.

ORDER

01-cr-32-bbc

On March 8, 2013, defendant Robert Sutton filed a “Request for an Evidentiary Hearing Pursuant to Lafler.” In an order entered on March 12, 2013, I construed defendant’s motion as one brought pursuant to 28 U.S.C. § 2255 and denied it for lack of jurisdiction because it had not been certified by the court of appeals as is required under 28 U.S.C. § 2255.

Now defendant has filed a notice of appeal. He has not paid the \$455 fee that is required if he is to take an appeal from the denial of a § 2255 motion. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I will construe defendant’s notice as including a request for leave to proceed in forma pauperis on appeal under 28 U.S.C. § 1915.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization “unless the district court shall certify that the appeal is not

taken in good faith or shall find that the party is otherwise not entitled so to proceed.” I do not need to decide whether defendant is indigent because I am certifying that the appeal is not taken in good faith. In this case a reasonable person could not suppose that the appeal has some merit, as is required in order for the appeal to be taken in good faith.

The law is clear on the subject of successive appeals. It is not debatable that defendant is prohibited from filing a second motion to vacate his sentence under 28 U.S.C. § 2255, no matter what he titles his motion, without obtaining advance permission to do so from the court of appeals. Therefore, I will deny defendant’s request to proceed in forma pauperis on appeal.

ORDER

IT IS ORDERED that defendant Robert Sutton’s request to proceed in forma pauperis on appeal is DENIED.

Entered this 4th day of April, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge