

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

01-cr-32-bbc

v.

MICHAEL L. BROWN,

Defendant.

Defendant Michael Brown has filed a notice of appeal from the October 25, 2012 order denying his motion for a new trial under Fed. R. Crim. P. 33(b). His notice of appeal was not accompanied by the \$455 fee for filing an appeal. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I construe it as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915.

As an initial matter, I note that defendant's appeal appears to be untimely. It was not filed within fourteen days of the date of the order denying his motion, and defendant did not include with his notice a motion for an extension of time to file a notice of appeal that was supported by a showing of excusable neglect or good cause for the late filing as Fed. R. App. P. 4 requires. However, district courts do not have authority to deny a defendant's

request for leave to proceed in forma pauperis on the ground that the appeal is untimely. That authority rests solely with the court of appeals. Sperow v. Melvin, 153 F.3d 780 (7th Cir. 1998). Therefore, I will consider defendant's request for leave to proceed in forma pauperis on appeal.

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." Defendant had appointed counsel during the criminal proceedings against him and I do not intend to certify that the appeal is not taken in good faith. Defendant's allegations in support of a new trial are not wholly frivolous. A reasonable person could suppose that they have some merit. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

ORDER

IT IS ORDERED that defendant Michael Brown's request for leave to proceed in forma pauperis on appeal is GRANTED.

Entered this 19th day of November, 2012.

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