

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

STACEY MILLER,

Defendant.

ORDER

01-cr-71-bbc

Defendant Stacy Miller has filed a notice of appeal of the court's May 13, 2013 order denying his motion under 18 U.S.C. § 3582. Defendant has not submitted the \$455 fee for filing his notice of appeal that is required if he is to take an appeal from the denial of a § 3582 motion. Therefore, I 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." Defendant had court-appointed counsel during the criminal proceedings. Therefore, he can

proceed in forma pauperis on appeal unless I find that his appeal is taken in bad 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. As I explained in the March 13, 2013 order, defendant does not qualify for a reduction under either amendment to the sentencing guidelines. Because he is not eligible for a reduction, I will deny his request to proceed in forma pauperis on appeal.

Under Fed. R. App. P. 24, defendant has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by (1) an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and (2) a copy of this order.

ORDER

IT IS ORDERED that defendant Stacey Miller's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that defendant's appeal is not taken in good

faith. Defendant has the right to appeal this order certifying his appeal as not taken in good faith.

Entered this 22d day of May, 2013.

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