

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

In an order entered on November 4, 2010, I denied defendant Stacey Miller's second motion pursuant to 18 U.S.C. § 3582 and Amendment 709 to the Sentencing Guidelines (dkt. #186). Defendant has filed a notice of appeal and motion for appointment of counsel. He has not paid the \$455 fee for filing his notice of appeal which 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 pursuant to 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. 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 November 4, 2010 order, defendant is not eligible for a sentence reduction under § 3582 because at sentencing he was determined to be a career offender and is not affected by the 2007 amendments to the sentencing guidelines. Therefore, I will deny defendant’s request to proceed in forma pauperis on appeal.

As to defendant’s motion for appointment of counsel on appeal, he will have to make that request directly to the court of appeals.

Pursuant to 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 an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

ORDER

IT IS ORDERED that defendant Stacey Miller’s request for leave to proceed in forma pauperis on appeal and motion to appoint counsel are 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 7th day of December, 2010.

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