

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ORDER

TERRY SCHAFFNER,

00-CR-006-C-01

03-C-067-C

Defendant.

On March 24, 2006 defendant's Rule 60(b) motion was dismissed for lack of jurisdiction. On May 1, 2006 the Court received petitioner's notice of appeal, a request for a certificate of appealability and a request to proceed in forma pauperis.

A certificate of appealability may be issued only if the petitioner has shown the denial of a constitutional right. Petitioner's petition was dismissed for lack of jurisdiction. He has not shown the denial of a constitutional right. Accordingly, petitioner's request for a certificate of appealability will be denied.

____ In Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997), the United States Court of Appeals discussed the determination of whether an appeal is taken in bad faith as follows:

Frivolousness is an objective inquiry; "good faith" implies a subjective standard. But judges lack access to the plaintiff's mental

processes. Thoughts must be inferred from acts. A plaintiff who has been told that the claim is foreclosed and then files a notice of appeal without offering any argument to undermine the district court's conclusion is acting in bad faith.

Petitioner does not present any reasons or argument to undermine the Court's conclusion that his motion must be dismissed for lack of jurisdiction. Accordingly, the Court finds that petitioner's appeal is taken in bad faith, and his request to proceed in forma pauperis on appeal will be denied.

ORDER

IT IS ORDERED that petitioner's request for a certificate of appealability is DENIED.

IT IS ORDERED that petitioner's request to proceed in forma pauperis on appeal is DENIED.

Entered this 4th day of May, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge