

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

TERRY SCHAFFNER,

Defendant.

ORDER

03-C-0067-C

00-CR-0006-C-01

Defendant Terry Schaffner has filed a notice of appeal, an application for a certificate of appealability and an application to proceed on appeal without prepayment of fees. I will begin by addressing the application for the certificate of appealability, which is a prerequisite for appeal of the denial of defendant’s motion for postconviction relief brought pursuant to 28 U.S.C. § 2255. See 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Such a certificate shall issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” § 2253(c)(2).

Before issuing a certificate of appealability, a district court must find that the issues the applicant wishes to raise are ones that “are debatable among jurists of reason; that a court *could* resolve the issues [in a different manner]; or that the questions are adequate to

deserve encouragement to proceed further.” Barefoot v. Estelle, 463 U.S 880, 893 n.4 (1983). I cannot say that the issues defendant wishes to raise are debatable among reasonable jurists or are adequate to deserve encouragement to proceed further. Defendant raised claims that were clearly without merit and, in some cases, based on inaccurate factual allegations. Therefore, I will not issue a certificate of appealability.

Turning to defendant’s application for leave to proceed on appeal in forma pauperis, I note that he had privately retained counsel when he was tried here. However, it appears from the affidavit he submitted that he is indigent. His prison account shows a balance of \$0.00, although money has been deposited into it during the period he has been incarcerated. I find that defendant is unable to prepay the cost of filing an appeal or to give security for the fees and costs.

I do not intend to certify that defendant’s appeal is not taken in good faith. Defendant has explained why he believes the court erred in denying his motion and set forth arguments in support of his position.

ORDER

IT IS ORDERED that defendant Terry Schaffner’s application for a certificate of appealability is DENIED; his motion for leave to proceed on appeal in forma pauperis is

GRANTED.

Entered this 18th day of June, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge