

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

03-CR-0063-C

v.

TOMMY LOVE,

Defendant.

Defendant has filed a motion for transcripts and investigative reports and petition and affidavit for leave to proceed in forma pauperis, requesting a copy of his plea, sentencing and grand jury transcripts as well as copies of investigative reports and discovery at government expense. Defendant states that he wishes to use the transcripts and documents to assist in drafting a pro se motion under 28 U.S.C. § 2255.

Defendant's motion must be denied. Defendant's entitlement to preparation of the plea and sentencing hearing transcripts at government expense is governed by 28 U.S.C. §753(f), which provides in relevant part:

Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States . . . if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.

Defendant has filed one § 2255 motion in this case. He cannot file another such motion unless he obtains certification for doing so from the Court of Appeals for the Seventh Circuit. Without the certification, this court has no authority to entertain another motion for postconviction relief, much less make a determination of the frivolity of such a motion.

Defendant has also asked for a copy of the grand jury transcripts. "To obtain grand jury material, despite the presumptive secrecy imposed by Fed. R. Crim. P. 6(e), a litigant must show that the information 'is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that [the] request is structured to cover only material so needed.'" United States v. Campbell, 324 F.3d 497, 499 (7th Cir. 2003) (quoting Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211, 222 (1979)). Again, defendant cannot show that he has any need for these transcripts or that any other judicial proceeding is pending in which the grand jury materials could be used.

As to defendant's request for discovery materials, Rule 6 of the rules relating to § 2255 actions provides that a party is entitled to discovery only "if, and to the extent that, the judge in the exercise of [the judge's] discretion and for good cause shown grants leave." Defendant cannot make a showing of good cause because he has no proceeding pending and no likelihood of initiating a proceeding at this time.

If defendant wishes, he may obtain a copy of the transcripts, with the exception of the grand jury transcripts, at his own expense by writing directly to the Court Reporters Office, United States District Court, 120 N. Henry Street, Madison, WI, 53703, (608) 255-

3821.

ORDER

IT IS ORDERED that defendant's motion for preparation of transcripts at government expense pursuant to 28 U.S.C. §753(f), for copies of grand jury transcripts and for discovery materials is DENIED.

Entered this 13th day of March, 2007.

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

