

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN SANDERS,

Defendant.

ORDER

06-C-0028-C
03-CR-0097-C

Defendant John Sanders has filed a notice of appeal and a request for a certificate of appealability from the denial of his motion brought pursuant to 28 U.S.C. § 2255. 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 § 2255 motion. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. 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 appointed counsel during his criminal

proceedings. Furthermore, I do not intend to certify that the appeal is not taken in good faith. Defendant's challenges to his sentence are not wholly frivolous. A reasonable person could suppose that they have some merit. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

A certificate of appealability 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). "[T]he standard governing the issuance of a certificate of appealability is not the same as the standard for determining whether an appeal is in good faith. It is more demanding." Walker v. O'Brien, 216 F.3d 626, 631 (7th Cir. 2000).

None of defendant's challenges to his sentence meet the demanding standard for a certificate of appealability. In the order denying defendant's § 2255 motion, I explained clearly why each of the allegations defendant made against his trial counsel did not constitute ineffective assistance of counsel and why, in any event, defendant was not prejudiced by his counsel's actions. The remaining issues were denied because defendant raised them on direct appeal. Because the issues defendant wishes to raise on appeal are not

debatable among reasonable jurists, a court could not resolve the issues differently and the questions are not adequate to deserve encouragement to proceed further, I am declining to issue a certificate of appealability.

Defendant has the right to appeal this order denying him a certificate of appealability.

ORDER

IT IS ORDERED that defendant John Sanders's request for leave to proceed in forma pauperis on appeal is GRANTED and his request for a certificate of appealability is DENIED.

Entered this 26th day of July, 2006.

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