

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

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TYSON EUGENE MARSHEK,

Petitioner,

v.

JOSEPH SCIBANA, Warden,  
Federal Correctional Institution,

Respondent.  
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ORDER

04-C-261-C

This petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 was dismissed on June 1, 2004, for lack of jurisdiction. Specifically, I found that petitioner could not raise in a habeas corpus petition his challenge to the confiscation of legal materials he wanted to use to appeal his conviction and sentence and that he would have to file a § 2255 motion in the district court in which he was convicted if he wished to pursue his claim that the government was without authority to prosecute him for bank robbery. Now petitioner has filed a notice of appeal and requests leave to proceed in forma pauperis on appeal. The request will be denied because I must certify that petitioner's appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3).

Petitioner does not assert that this court erred in interpreting the allegations of his petition as challenging the validity of his conviction. Rather, he appears to want an opinion from the court of appeals whether it was error for this court to refuse to consider his challenges despite the lack of jurisdiction. Although I understand petitioner's frustration at being jurisdictionally barred from raising his challenges here, there is no legal merit to the claim he wishes to raise on appeal. Therefore, his request for leave to proceed in forma pauperis on appeal will be denied.

If petitioner intends to challenge this court's certification that his appeal is not taken in good faith, he has 30 days from the date he receives this order in which to file with the court of appeals a motion for leave to proceed in forma pauperis on appeal. His motion must be accompanied by a copy of the affidavit prescribed in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

#### ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on

appeal is DENIED and I certify that petitioner's appeal is not taken in good faith.

Entered this 11th day of June, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge