

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MONCLAIR HENDERSON-EL,

Defendant.

ORDER

08-cv-219-bbc

04-cr-162-jcs

In an order entered on May 12, 2008, I denied defendant Monclair Henderson-El's post conviction motion brought pursuant to 28 U.S.C. § 2255. On May 27, defendant filed an application for a certificate of appealability, which I denied on June 9, 2008, after concluding that defendant had failed to show that the issues he raised in his § 2255 motion could not have been raised on direct appeal.

Now defendant has filed a "petition for leave to file and proceed on appeal in forma pauperis." I construe this document to include a notice of appeal from the May 12, 2008 order denying defendant's § 2255 motion.

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 court-appointed counsel. Therefore, he can proceed in forma pauperis on appeal unless I find that his appeal is not taken in good faith. In this case, I have to make that finding. No reasonable person could suppose that there is merit to defendant’s appeal from this court’s finding that his § 2255 motion raises claims that cannot be heard under § 2255 because they were raised or could have been raised on direct appeal, as is required for a finding that the appeal is taken in good faith. Therefore, I must deny defendant’s request to proceed in forma pauperis on appeal.

ORDER

Defendant’s motion for leave to proceed in forma pauperis on appeal is DENIED. I certify that defendant’s appeal is not taken in good faith.

Entered this 7th day of July, 2008.

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