

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN E. BEDNARSKI,

Defendant.  
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ORDER

04-CR-0196-C-01  
06-C-0152-C

Defendant John Bednarski has filed a notice of appeal, paid his filing fee and asked for a certificate of appealability, which he needs if he is to appeal the denial of his 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). Because it was necessary to hold an evidentiary hearing on defendant's claim that

he had been denied the effective assistance of trial counsel and because I made credibility decisions in the course of the hearing, I am prepared to say that a court *could* resolve the issues differently.

I conclude that the issue defendant wishes to raise might be debatable among reasonable jurists and for that reason find him entitled to the issuance of a certificate of appealability.

#### ORDER

IT IS ORDERED that defendant John Bednarski's request for a certificate of appealability is GRANTED.

Entered this 3d day of July, 2006.

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