

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

SEBASTIAN MOLINA,

Petitioner,

ORDER

v.

05-C-0282-C

PHIL KINGSTON, Warden,
Waupun Correctional Institution,

Respondent.

On November 29, 2005, this court entered judgment denying petitioner Sebastian Molina's petition for a writ of habeas corpus. Petitioner has now filed a notice of appeal. Because petitioner has not paid the appellate filing fee, I presume that he wants to proceed *in forma pauperis* on appeal.

When reviewing a state habeas petitioner's request for leave to proceed in forma pauperis on appeal, this court must determine whether petitioner is taking his appeal in good faith. 28 U.S.C. § 1915(a)(3). To find that an appeal is in good faith, a court need find only that a reasonable person could suppose the appeal has some merit. Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000).

When the magistrate judge issued his report and recommendation, his office sent petitioner a copy of the document along with a memorandum informing petitioner of his right to file objections to the report and recommendation. A copy of that correspondence

is attached to this order. The memorandum included a warning that failure to object could constitute a waiver of the right to appeal. Video Views, Inc. v. Studio 21, Ltd., 797 F.2d 538, 539 (7th Cir. 1986) (“failure to file objections with the district judge waives the right to appeal all issues, both factual and legal”). Petitioner did not file any objections to the magistrate judge’s report and recommendation. Accordingly, petitioner has waived his right to appeal. For that reason, I am unable to certify that his appeal is taken in good faith. Because I find that petitioner’s appeal is not taken in good faith, I have not considered whether he would be entitled to a certificate of appealability under 28 U.S.C. § 2253(c)(1)(A) and Fed. R. App. P. 22.

ORDER

IT IS ORDERED that petitioner Sebastian Molina’s request for leave to proceed in forma pauperis on appeal is DENIED because I am certifying that his appeal is not taken in good faith.

Entered this 12th day of December, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge