

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTWAN WINDOM,

Defendant.

ORDER

07-cr-40-bbc

In an order entered on May 28, 2008, I denied defendant Antwan Windom's motion pursuant to 18 U.S.C. § 3582 and Amendment 709 to the Sentencing Guidelines (dkt. #28). Defendant has filed a notice of appeal and request to proceed in forma pauperis on appeal.

According to § 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." From his financial affidavit, I conclude that he qualifies for indigent status on appeal. However, I must certify that the appeal is not taken in good faith. As I explained in the May 28, 2008 order,

defendant was sentenced on September 5, 2007, before Amendment 709 took effect. Because the Sentencing Commission has not held the amendment retroactive, defendant cannot rely on it to challenge his sentence. Defendant's challenge is without any basis in the law and no reasonable person could suppose that it has any merit. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

Defendant has the right to appeal this order finding that his appeal is not taken in good faith.

ORDER

IT IS ORDERED that defendant Antwan Windom's request for leave to proceed in forma pauperis on appeal from this court's order of May 28, 2008 is DENIED. I certify that defendant's appeal is not taken in good faith.

Entered this 18th day of June, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge