

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

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

v.

09-cr-122-bbc

ANDRE G. SIMMONS,

Defendant.

Defendant Andre Simmons has filed a notice of appeal of the court's September 25, 2015 order denying his motion under 18 U.S.C. § 3582, in which he asked the court to reduce his sentence. His motion was denied because the new amendments do not affect his guidelines. Defendant was sentenced as a career offender and the new amendments leave the career offender guidelines unchanged.

Defendant's notice of appeal was not accompanied by the \$505 fee for filing an appeal. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I construe it as including a request for leave to proceed in forma pauperis on appeal under 28 U.S.C. § 1915. According to 28 U.S.C. § 1915(a)(3), "an appeal may not be taken in forma pauperis if the

trial court certifies in writing that it is not taken in good faith." In Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000), the Court of Appeals for the Seventh Circuit ruled that an appeal is not taken in "good faith" if it is based on a "frivolous claim" that is, "a claim that no reasonable person could suppose to have any merit." Id. at 1026. Defendant's claim is not "fantastical," as were the claims in Lee, in which the allegation was that the United States and China were engaged in a conspiracy to invade and infect certain people with a mind reading device. I cannot say that petitioner's appeal is of that type or that it is wholly without merit. However, it is a claim so clearly foreclosed by the governing law that no reasonable person would suppose it has merit.

ORDER

IT IS ORDERED that defendant Andre Simmons's request for leave to proceed in forma pauperis on appeal is DENIED.

Entered this 14th day of October, 2015.

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