

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

TELLY KINGCADE,

Defendant.

ORDER

10-cv-349-bbc
07-cr-142-bbc

Defendant Telly Kingcade has filed a notice of appeal and a request for a certificate of appealability from the September 30, 2010 order and October 1, 2010 judgment entered in this case denying his § 2255 motion.

Defendant's notice of appeal was not accompanied by the \$455 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 pursuant to 28 U.S.C. § 1915. 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 appointed counsel during the criminal proceedings against him and I do not intend to certify that the appeal is not taken in good faith. Defendant’s challenge to his sentence is not wholly frivolous. A reasonable person could suppose that it has some merit. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

As to defendant’s request for a certificate of appealability, it is not necessary to address the issue. I denied defendant’s request in the September 30, 2010 order, finding that no reasonable jurist would believe that defendant’s motion has any merit. Under Fed. R. App. P. 22(b), if defendant wishes to challenge the denial of a certificate of appealability, he may request a circuit judge to issue the certificate.

ORDER

IT IS ORDERED that defendant Telly Kingcade’s request for leave to proceed in forma pauperis on appeal is GRANTED. His request for a certificate of appealability is DENIED.

Entered this 29th day of December, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge