

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANGEL SERVIN,

Defendant.

ORDER

09-cr-80-bbc

10-cv-815-bbc

Defendant Angel Servin has filed a motion for production of trial transcripts under Fed. R. App. P. 11(b)(1)(A). His motion will be denied. 28 U.S.C. §753(f), provides in relevant part:

Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States . . . if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.

In his motion, defendant states that he needs the transcripts so that he can file a certificate of appealability from the denial of his motion for post-conviction relief under 28 U.S.C. § 2255. In the January 3, 2011 order denying defendant's § 2255 motion, I determined that under Rule 11 of the Rules Governing Section §2255 proceedings, the defendant was not entitled to a certificate of appealability because he had failed to make a

substantial showing of the denial of a constitutional right. Under Fed. R. App. P. 22(b), if defendant wishes to challenge the denial of the certificate of appealability, he may request a circuit judge to issue the certificate. I cannot certify that defendant's appeal of the denial of his § 2255 motion would not be frivolous or that the transcript is necessary.

If defendant wishes, he may obtain a copy of the transcripts at his own expense by writing directly to the Court Reporters Office, United States District Court, 120 N. Henry Street, Madison, WI, 53703, (608) 255-3821.

ORDER

IT IS ORDERED that defendant's motion for preparation of transcripts at government expense pursuant to 28 U.S.C. §753(f) is DENIED without prejudice.

Entered this 24th day of January, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge