

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARCUS KILGORE,

Defendant.

ORDER

10-cv-91-bbc
08-cr-38-bbc

On July 7, 2010 defendant filed with the court of appeals a request for a certificate of appealability from the district court's May 17, 2010 order and May 18, 2010 judgment denying his motion under 28 U.S.C. § 2255. Because the court of appeals had no record of a pending appeal in this case, it has forwarded defendant's request to this court.

Defendant has not filed a notice of appeal, but I will construe his application for a certificate of appealability as including such a notice. Additionally, defendant has not paid the \$455 fee that is required if he is to take an appeal from the denial of a § 2255 motion. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I will also construe defendant's request 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), 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 court-appointed counsel during the criminal proceedings against him and I do not intend to certify that his 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. Cf., Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000). Therefore, I will grant him leave to proceed on appeal in forma pauperis.

As to defendant’s request for a certificate of appealability, I denied that request in the order denying his § 2255 motion, dkt. #9, because he had not made a substantive showing of a denial of a constitutional right. Pursuant to Fed. R. App. P. 22(b), I informed defendant that he could request a circuit judge to issue the certificate.

ORDER

Defendant Marcus Kilgore’s request to proceed in forma pauperis on appeal is

GRANTED. His request for a certificate of appealability is DENIED.

Entered this 13th day of July, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge