

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT MICHENER,

Defendant.  
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ORDER

11-cv-171-bbc  
08-cr-47-bbc

In an order entered in this case on August 26, 2011, I granted defendant Robert Michener's leave to proceed in forma pauperis on appeal and denied his request for a certificate of appealability to appeal the denial of his motion for post conviction relief brought pursuant to 28 U.S.C. § 2255. In doing so, I overlooked the fact that defendant had retained counsel during the criminal proceedings and therefore is not automatically eligible for in forma pauperis status. Defendant will have to show that he is entitled to pauper status on appeal. Therefore, I will vacate the August 26, 2011 order and give defendant until September 20, 2011 to complete and file the enclosed affidavit so that I may determine his financial eligibility to proceed on appeal without prepaying the fee for filing his notice of appeal.

ORDER

IT IS ORDERED that the August 26, 2011, order is VACATED.

IT IS FURTHER ORDERED that defendant shall have until September 20, 2011, in which to file an affidavit of indigency with the court so it can determine whether defendant is eligible to proceed on appeal in forma pauperis.

Entered this 30th day of August, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge