

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

LARRY SULLIVAN,

Petitioner,

ORDER

11-cr-79-bbc

v.

UNITED STATES OF AMERICA

Respondent.

Petitioner Larry Sullivan has filed a notice of appeal of the court's February 5, 2015 order denying his motion for production of trial transcripts. Although it appears that the appeal is untimely, it is not within this court's authority to determine the timeliness of an appeal; that decision is for the court of appeals to make.

Petitioner'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 "good

faith” was to be read as synonymous with “frivolous,” or more precisely, as “not frivolous.” In this context, the meaning of “frivolous” does not mean only “fantastical,” as were the claims in Lee, in which the allegation was that the United States and China were engaged in 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.

ORDER

IT IS ORDERED that petitioner Larry Sullivan’s request for leave to proceed in forma pauperis on appeal is GRANTED.

Entered this 30th day of July, 2015.

BY THE COURT:

/s/
BARBARA B. CRABB
District Judge