

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

COREY THOMAS,

Defendant.

ORDER

08-cr-87-bbc
12-cv-269-bbc

On February 11, 2014, defendant Corey Thomas filed a motion for relief from judgment under Fed. R. Civ. P. 60(b). In an order entered the same day, I denied defendant's motion for lack of jurisdiction because it was a request for the court to consider the legality of defendant's sentence and was not accompanied by a prior certification by a panel of the court of appeals. Thereafter, defendant filed a motion for reconsideration, which I denied on February 25, 2014.

On March 10, 2014, defendant filed a notice of appeal from the February 12 and 25, 2014 orders. In an order entered on March 11, 2014, I granted defendant leave to proceed on appeal in forma pauperis.

At that time that defendant filed his notice of appeal, he did not request a certificate

of appealability under 28 U.S.C. § 2253(c)(1)(B) and I failed to address such a certificate in the February 11, 2014 order, so I will address it now. “[T]he standard governing the issuance of a certificate of appealability is not the same as the standard for determining whether an appeal is in good faith. It is more demanding.” Walker v. O'Brien, 216 F.3d 626, 631 (7th Cir. 2000). Such a certificate shall issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A defendant makes a “substantial showing where reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” Arredondo v. Huibregtse, 542 F.3d 1155, 1165 (7th Cir. 2008). Where denial of relief is based on procedural grounds, the defendant also must show that jurists of reason “would find it debatable whether the district court was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Defendant’s challenge to his sentence does not meet the demanding standard for a certificate of appealability. There is no support anywhere in the law that defendant may file a successive motion under § 2255 without prior certification from a panel of the court of appeals. Because reasonable jurists would not disagree about this conclusion, I must deny defendant’s request for a certificate of appealability. Pursuant to Fed. R. App. P. 22(b), if a district judge denies an application for a certificate of appealability, the defendant may request a circuit judge to issue the certificate.

ORDER

IT IS ORDERED that defendant Corey Thomas's request for a certificate of appealability is DENIED.

Entered this 24th day of April, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge