

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

ARMIN WAND, III,

Plaintiff,

ORDER

v.

14-cv-539-wmc

D. FLANNERY
and JERRY SWEENEY,

Defendants.

Judgment was entered in this case on June 22, 2015, after this court dismissed plaintiff Armin Wand, III's complaint against prison staff at the Wisconsin Secure Program Facility in Boscobel, WI, as legally frivolous. Wand has now filed a notice of appeal, (dkt. # 16), and a request for leave to proceed *in forma pauperis* on appeal, (dkt. #17).

In determining whether a litigant is eligible to proceed *in forma pauperis* on appeal, the court must find that he is indigent and, in addition, that the appeal is taken in good faith for purposes of Fed. R. App. P. 24(a)(3). *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken *in forma pauperis* if the court certifies in writing that it is not taken in good faith."). Although Wand has been found eligible to proceed as an indigent litigant previously in this case, the court cannot certify that the appeal is taken in good faith. In that respect, the United States Court of Appeals for the Seventh Circuit has instructed district courts to find bad faith where a plaintiff is appealing claims that have been dismissed as frivolous. *See Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). To

the extent that Wand is attempting to raise on appeal the same legally frivolous claims he raised in his complaint, the court certifies that the appeal is not taken in good faith for purposes of Fed. R. App. P. 24(a)(3). Accordingly, his request for leave to proceed *in forma pauperis* on appeal must be denied.

ORDER

IT IS ORDERED that:

- (1) The court CERTIFIES that plaintiff Armin Wand, III's appeal is not taken in good faith for purposes of Fed. R. App. P. 24(a)(3).
- (2) Plaintiff's request for leave to proceed *in forma pauperis* on appeal, (dkt. #17), is DENIED.
- (3) Although this court has certified that plaintiff's appeal is not taken in good faith under Fed. R. App. P. 24(a)(3), plaintiff is advised that he may challenge this finding pursuant to Fed. R. App. P. 24(a)(5), by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, United States Court of Appeals for the Seventh Circuit, within thirty (30) days of the date of this order. With that motion, plaintiff must include an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), along with a copy of this order and a statement of issues he intends to argue on appeal. Plaintiff should be aware that he must file these documents in addition to the notice of appeal he has filed previously.

Entered this 23rd day of July, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge