

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

GALE RACHUY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

15-cv-235-wmc

10-cr-141-wmc

Petitioner Gale Rachuy has filed a notice of appeal of the court’s April 15, 2016 order denying his motion for post-conviction relief under 28 U.S.C. § 2255, along with a motion to proceed *in forma pauperis* on appeal. (Dkt. #45.) Petitioner was previously found eligible for court-appointed counsel in his underlying criminal case and was granted *in forma pauperis* status on his previous appeal. His financial affidavit demonstrates that he is unable to pay the filing fee for his appeal. Accordingly, he may proceed *in forma pauperis* on appeal unless this court “certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). The court does not find that Rachuy’s appeal is taken in bad faith and therefore, will grant his request to proceed *in forma pauperis*.

Rachuy has also filed a motion for release pending appeal, on the grounds that he is sure to win his appeal and will present no danger to the public if released. (Dkt. #48.) That motion will be denied. Although “federal district judges in habeas corpus and § 2255 proceedings have inherent power to admit applicants to bail pending the decisions of their cases, [it is] a power to be exercised very sparingly.” *Cherek v. United States*, 767 F.2d 335, 337 (7th Cir.1985). “The reasons for parsimonious exercise of the power should be obvious.” *Id.*

“A defendant whose conviction has been affirmed on appeal ... is unlikely to have been convicted unjustly; hence the case for bail pending resolution of his post-conviction proceeding is even weaker than the case for bail pending appeal. And the interest in the finality of criminal proceedings is poorly served by deferring execution of sentence until long after the defendant has been convicted.” *Id.* Here, Rachuy has demonstrated no exceptional circumstances and has not shown that he is deserving of special treatment while his § 2255 appeal is pending. His only arguments in favor of release are the same arguments that this court already considered and rejected in denying his § 2255 motion. Accordingly, Rachuy will not be released pending appeal.

ORDER

IT IS ORDERED that:

1. Petitioner Gale A. Rachuy’s request for leave to proceed *in forma pauperis* on appeal (dkt. #45) is GRANTED.
2. Petitioner’s motion for release pending appeal (dkt. #48) is DENIED.

Entered this 21st day of July, 2016.

BY THE COURT:

/s/
WILLIAM M. CONLEY
District Judge