

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

JUAN CARLOS HERNANDEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER

00-cr-113-bbc

16-cv-435-bbc

Petitioner Juan Carlos Hernandez has filed a notice of appeal from the court's December 20, 2017 order and judgment denying his post conviction motion under 28 U.S.C. § 2255. He also requests leave to proceed in forma pauperis on appeal. 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.

As to petitioner's motion to proceed on appeal in form pauperis, according to 28 U.S.C. § 1915(a), a petitioner who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed." Petitioner had appointed

counsel during the criminal proceedings against him and I do not intend to certify that the appeal is not taken in good faith. Petitioner's challenge to his sentence is not wholly frivolous. A reasonable person could suppose that it has some merit. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

ORDER

Petitioner Juan Carlos Hernandez's motion to proceed in forma pauperis on appeal is GRANTED.

Entered this 7th day of February, 2018.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge