

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

RONALD S. SCHILLING,

Petitioner,

ORDER

v.

98-C-565-C

DONALD W. GUDMANSON, Warden,
Jackson Correctional Institution,

Respondent.

Petitioner Ronald Schilling seeks leave to proceed in forma pauperis on appeal from this court's order entered June 11, 2004, denying his motion to reopen his case, and from the order entered June 24, 2004, denying his motion for reconsideration. In order to grant petitioner permission leave to proceed in forma pauperis on appeal, I must find that his appeal is taken in good faith. 28 U.S.C. § 1915(a)(3).

I am unable to make this finding. As this court explained in its order denying the motion to reopen, petitioner's claim that the 2002 classification rules are having the same negative effect on him as the old rules had is a new controversy that must be presented to the court by way of a new lawsuit. Petitioner's motion to reopen this case was not brought under Rule 60(b), but was based upon his contention that it would be easier and more efficient to simply reopen the old case rather than to have to refile "everything anew." In other words, petitioner's motion was brought in the interest of administrative convenience rather than upon any substantive grounds

of the sort identified in Rule 60(b). This court's denial of the motion to reopen was a discretionary, administrative determination that is not appealable under the Federal Rules. Even if it were, I cannot find that reasonable people could find the appeal to have merit in light of the fact that the rules that Schilling now seeks to challenge are different from those that were in effect when he filed his initial petition. Accordingly, the motion for leave to proceed in forma pauperis on appeal must be denied.

Petitioner has also filed a motion for leave to take the deposition of Stephen M. Puckett, Director of the Bureau of Offender Classification and Movement, pending appeal. That motion will also be denied. As this court has explained to petitioner, he may file a new civil lawsuit to challenge the operation of the security classification rules. If this court was to find such a lawsuit to have merit, then petitioner could attempt to obtain the information he seeks through pretrial discovery. However, it is not appropriate to allow petitioner to depose Director Puckett for a lawsuit that does not yet exist.

ORDER

IT IS ORDERED that the motions of petitioner Ronald Schilling for leave to proceed in forma pauperis on appeal and to take the deposition of Stephen M. Puckett pending appeal are both DENIED.

Dated this 20th day of July, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge