

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK J. WRIGHT,

Defendant.

ORDER

03-C-0709-C
00-CR-0098-C

Defendant Mark Wright has filed an Affidavit Accompanying Motion for Permission to Appeal in Forma Pauperis. He has not filed an accompanying motion, notice of appeal or asked this court to issue a certificate of appealability. I assume that defendant wishes to appeal this court's February 23, 2006 judgment dismissing his successive motion pursuant to 28 U.S.C. § 2255 for lack of jurisdiction. Therefore, I construe defendant's submission as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915 and a request for a certificate of appealability. I conclude that the answer is no to both requests.

Defendant is financially eligible to proceed on appeal in forma pauperis. Therefore, he can proceed on appeal in forma pauperis unless I find that his appeal is taken in bad faith. In this case, a reasonable person could not suppose that the appeal has some merit, as is required in order for the appeal to be taken in good faith. The standard for making that finding is different from the standard for deciding whether to issue a certificate of appealability. It is less demanding. Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000). Applying this lower standard, I conclude that defendant is not proceeding in good faith. The law is clear on the subject of successive appeals. It is not debatable that defendant is foreclosed from filing repeated motions to vacate his sentence pursuant to 28 U.S.C. § 2255 without obtaining advance permission to do so from the court of appeals. Therefore, I certify that his appeal is not taken in good faith and that for this reason, defendant is not entitled to proceed in forma pauperis on appeal. Further, I decline to issue 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 Mark Wright's request for a certificate of appealability and motion for leave to appeal in forma pauperis is DENIED.

Further, IT IS ORDERED that if defendant files any further documents in this case, the clerk of court is directed to forward them to me before filing. If I determine that the document includes a challenge to defendant's conviction or sentence and is not accompanied by an order of the Court of Appeals for the Seventh Circuit permitting the filing, then I will place the document in the file of this case and make no response to it.

Entered this 23d day of March, 2006.

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