

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK A. WINFIELD,

Defendant.

ORDER

01-CR-0071-C
05-C-744-C

Defendant Mark A. Winfield has filed a notice of appeal from the court's January 4, 2006 dismissal of his motion pursuant to 28 U.S.C. § 2255. Defendant has not asked this court to issue a certificate of appealability and he has not submitted the filing fee of \$255 or asked for a determination that he be permitted to proceed in forma pauperis. Therefore, it is necessary to decide whether a certificate of appealability should issue and whether defendant is entitled to proceed in forma pauperis. I conclude that the answer is no to both questions.

According to Fed. R. App. P. 24(a), a defendant who is found eligible for court-appointed counsel in the district court 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” Defendant had court-appointed counsel at trial. Therefore, he can proceed on appeal 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. Although defendant has not submitted a statement of the issues he wishes to raise on appeal or even asked for issuance of a certificate of appealability, I will assume he wishes to appeal the fact that his motion pursuant to 28 U.S.C. § 2255 was denied as untimely. However, I cannot say that there is any probability that a reasonable jurist would reach a different conclusion on this issue. As I noted in both the January 4 and January 30 order, there is no merit to defendant's contention. Therefore, I decline to issue a certificate of appealability.

Defendant has the right to appeal from this denial of his request for a certificate of appealability.

ORDER

IT IS ORDERED that defendant Mark Winfield's request for a certificate of appealability and motion for leave to appeal in forma pauperis are DENIED.

Entered this 8th day of February, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge