

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

ZAN MORGAN,

Defendant.

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ORDER

05-C-0012-C  
02-CR-0141-C-02

Defendant Zan Morgan has filed a “Motion for Certificate of Appealability” from the judgment entered in this case on March 29, 2005. He has not filed a notice of appeal but I assume that such a notice will follow in due course. Additionally, he has not paid the \$255 fee for filing that is required if he is to take an appeal from the denial of a § 2255 motion. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I construe defendant’s motion as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915. According to 28 U.S.C. § 1915(a), a defendant 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.” Defendant 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. Defendant’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).

Despite the lack of a notice of appeal, I will decide the motion for a certificate of appealability, which defendant must have if he is to appeal the denial of his motion for post conviction relief brought pursuant to 28 U.S.C. § 2255. See 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Such a certificate shall issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” § 2253(c)(2). Before issuing a certificate of appealability, a district court must find that the issues the applicant wishes to raise are ones that "are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further." Barefoot v. Estelle, 463 U.S 880, 893 n.4 (1983). "[T]he standard governing the issuance of a certificate of appealability is not the same as the standard for determining whether an appeal is in good faith. It is more demanding." Walker v. O'Brien, 216 F.3d 626, 631 (7th Cir. 2000).

None of defendant's challenges to his sentence meet the demanding standard for a certificate of appealability. As I explained in the order entered on March 8, 2005, there is

no merit to defendant's claims that he was denied effective assistance of counsel when his attorney refused to arrange for an independent analysis of a taped telephone conversation that was introduced into evidence against him. As to his second claim that his attorney failed to undertake any investigation of his case and that he and his counsel had an irreconcilable conflict, I found that defendant offered no details to support his assertions.

The issues defendant seeks to raise on appeal are not debatable among reasonable jurists, no court would resolve the issues differently and the questions are not adequate to deserve encouragement to proceed further. Therefore, I decline to issue a certificate of appealability.

#### ORDER

IT IS ORDERED that defendant Zan Morgan's request for leave to proceed in forma pauperis on appeal is GRANTED; his request for a certificate of appealability is DENIED.

Entered this 20th day of April, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge

