

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

RANDALL E. SPRINGEN,

Defendant.

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ORDER

07-C-0064-C  
03-CR-0135-C

Defendant Randall E. Springen has filed a notice of appeal and a request for a certificate of appealability from the court's February 15, 2007 dismissal of his motion pursuant to 28 U.S.C. § 2255. He has not paid the fee for filing his notice of appeal which 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 notice 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 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. Nothing in defendant’s submission convinces me that there is any merit to his contention that the issues presented in his § 2255 were not raised on direct appeal. The law is clear on the subject of rearguing issues raised on direct appeal. Accordingly, I must certify that defendant’s appeal is not taken in good faith and that he cannot proceed in forma pauperis on appeal. Further, 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 Randall Springen's request for a certificate of appealability and motion for leave to appeal in forma pauperis are DENIED.

Entered this 29th day of March, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge