

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

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MARTIN J. APPLEBEE,

Petitioner,

v.

ORDER

UNITED STATES OF AMERICA,

06-C-327-S  
035-CR-159-S-01

Respondent.

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On September 10, 2006 judgment was entered in the above entitled matter denying petitioner's motion to vacate his sentence under 28 U.S.C. § 2255 with prejudice. Petitioner's motion for reconsideration was denied on September 19, 2006. On November 20, 2006 the Court received petitioner's request for a certificate of appealability which the Court construes as a notice of appeal and a request to proceed in forma pauperis.

A certificate of appealability may be issued only if the petitioner has shown the denial of a constitutional right. Petitioner has not shown the denial of a constitutional right. Accordingly, petitioner's request for a certificate of appealability will be denied.

      In Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997), the United States Court of Appeals discussed the determination of whether an appeal is taken in bad faith as follows:

Frivolousness is an objective inquiry; "good faith" implies a subjective standard. But judges lack access to the plaintiff's mental processes. Thoughts must be inferred from acts. A plaintiff who has been told that the claim is foreclosed and then files a notice of appeal without offering any argument to undermine the district court's conclusion is acting in bad faith.

On September 12, 2006 petitioner was advised that in future proceedings he must offer argument not cumulative of that already provided to undermine the Court's conclusion that his motion must be denied. Petitioner has not provided such argument. Accordingly, the Court finds that petitioner's appeal is taken in bad faith, and his request to proceed in forma pauperis on appeal will be denied.

ORDER

IT IS ORDERED that petitioner's request for a certificate of appealability is DENIED.

IT IS ORDERED that petitioner's request to proceed in forma pauperis on appeal is DENIED.

Entered this 21<sup>st</sup> day of November, 2006.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge