

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK J. WRIGHT,

Defendant.

ORDER

04-C-0240-C

99-CR-0106-C-03

Defendant Mark Wright has filed a notice of appeal and a request for a certificate of appealability from the denial of his motion brought pursuant to 28 U.S.C. § 2255. He has not paid the \$255 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 was found eligible for court-appointed counsel and I am not prepared to certify that his appeal is not taken in good faith. A reasonable person could find that the appeal has some merit.

However, I will deny his request for a certificate of appealability. Such a certificate is to issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” § 2253(c)(2). The standard for a certificate of appealability is higher than the standard for finding that appeal is taken in good faith; for a certificate, the court must find that defendant has made a substantial showing of the denial of a constitutional right; for an appeal in good faith a court need find only that a reasonable person could suppose that the appeal has some merit. Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000). 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). I do not believe that “jurists of reason” would debate the issues defendant wishes to raise. His strongest claim was that his court-appointed counsel coerced him into not taking the stand in his own defense but he could not support this claim with any evidence. In addition, it became evident that the testimony he might have given had he been allowed to testify would have been either inadmissible or useless. I cannot find that defendant has

made a substantial showing of the denial of a constitutional right. Therefore, I decline to issue a certificate of appealability.

ORDER

IT IS ORDERED that defendant Mark Wright's request for a certificate of appealability is DENIED.

Entered this 22d day of June, 2004.

BY THE COURT:
BARBARA B. CRABB
District Judge

