

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

ROBERT NELSON HOWELL,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-292-C

This petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 was dismissed on July 7, 2004, for lack of jurisdiction. Specifically, I found that because petitioner is challenging the validity of his conviction and sentence in the District Court for the Southern District of Illinois, this court lacks jurisdiction to entertain his claims under § 2241. His sole remedy is a motion pursuant to 28 U.S.C. § 2255 filed in the sentencing court. Now petitioner has filed a notice of appeal. Because the notice is not accompanied by the \$255 fee for filing an appeal, I construe the notice to include a request for leave to proceed in forma pauperis on appeal. The request will be denied because I must certify that petitioner's appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3).

Petitioner does not assert that this court erred in interpreting the allegations of his

petition as challenging the validity of his conviction. Rather, he appears to want an opinion from the court of appeals whether it was error for this court to refuse to consider his challenges despite the lack of jurisdiction to do so. Although I understand petitioner's frustration at being jurisdictionally barred from raising his challenges here, particularly in view of the fact that he already has been unsuccessful in obtaining a favorable ruling on his § 2255 motion in the sentencing court, his claim on appeal that this court should have exercised jurisdiction over his § 2255 claim is legally meritless. Therefore, his request for leave to proceed in forma pauperis on appeal will be denied.

If petitioner intends to challenge this court's certification that his appeal is not taken in good faith, he has 30 days from the date he receives this order in which to file with the court of appeals a motion for leave to proceed in forma pauperis on appeal. His motion must be accompanied by a copy of the affidavit prescribed in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on

appeal is DENIED and I certify that petitioner's appeal is not taken in good faith.

Entered this 17th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge