

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

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EDWARD D. ANDERSON,

Petitioner,

ORDER

v.

04-C-831-C

DANIEL BENIK, Warden, Stanley  
Correctional Institution,

Respondent.

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Petitioner Edward Anderson has filed a notice of appeal indicating that he seeks to appeal this court's dismissal of his petition for a writ of habeas corpus under 28 U.S.C. § 2254. Although petitioner has not filed a request for a certificate of appealability or for leave to proceed in forma pauperis on appeal, I infer from petitioner's notice of appeal that he is requesting both. For the reasons stated below, I am denying both motions.

Because petitioner seeks leave to proceed in forma pauperis on appeal, this court must determine whether petitioner is taking his appeal in good faith. See 28 U.S.C. § 1915(a)(3). In addition, pursuant to 28 U.S.C. § 2253(c)(1)(A) and Fed. R. App. P. 22, this court must determine whether to issue a certificate of appealability to petitioner. To find that an appeal is in good faith, a court need only find that a reasonable person could suppose the appeal has some merit. Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000). However, a certificate of appealability shall issue "only if the applicant has made a substantial showing

of the denial of a constitutional right.” Id.; see also 28 U.S.C. § 2253(c)(2). In order to make this showing, a petitioner must "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893, n.4 (1983)).

As should be plain from this court’s March 25, 2005 opinion, petitioner cannot make a substantial showing of the denial of a constitutional right. As explained in that opinion, petitioner’s challenge to his custody amounts to a dispute about the manner in which the state Department of Corrections awarded credit due him pursuant to a post-hoc award of sentencing credit. At most, that claim amounts to a claim that the department violated state law. The absence of a constitutional basis for petitioner’s claim means that he is not entitled to a certificate of appealability. Moreover, in light of the clear lack of a federal foundation for his petition, I am unable to conclude that his appeal is taken in good faith.

ORDER

Accordingly, IT IS ORDERED that petitioner Edward Anderson's requests for a certificate of appealability and for leave to proceed in forma pauperis on appeal are both DENIED.

Entered this 3<sup>rd</sup> day of May, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge