

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JERRY McCOY,

Defendant.

ORDER

04-cr-181-bbc

In an order entered on July 15, 2008, I denied defendant Jerry McCoy's motion pursuant to 18 U.S.C. § 3582 and Amendment 709 to the Sentencing Guidelines (dkt. #87). Thereafter on July 25, 2008, defendant filed a timely motion for reconsideration which was denied on July 28, 2008. Now defendant has filed a notice of appeal of both orders. He has not paid the \$455 fee for filing his notice of appeal which is required if he is to take an appeal from the denial of a § 3582 motion. 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. Therefore, he can proceed in forma pauperis 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. As I explained in the July 15, 2008 order, because Judge Shabaz did not base defendant’s sentence on the crack cocaine guidelines, defendant is not eligible for a sentence reduction under § 3582. Therefore, I will deny defendant’s request to proceed in forma pauperis on appeal.

Pursuant to Fed. R. App. P. 24, defendant has 30 days from the date of this order in which to ask the court of appeals to review this court’s denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

ORDER

IT IS ORDERED that defendant Jerry McCoy’s request for leave to proceed in forma pauperis on appeal from this court’s orders of July 15, 2008 and July 28, 2008 is DENIED.

I certify that defendant's appeal is not taken in good faith. Defendant has the right to appeal this order certifying his appeal as not taken in good faith.

Entered this 13th day of August, 2008.

BY THE COURT:

Barbara B. Crabb

BARBARA B. CRABB
District Judge