

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAMIRO MARTINEZ,

Defendant.

ORDER

04-cr-184-bbc

In an order entered on February 11, 2009, I denied defendant Ramiro Martinez's motion pursuant to 18 U.S.C. § 3582 and Amendment 709 to the Sentencing Guidelines (dkt. #38). Thereafter on March 4, 2009, defendant filed a timely motion for reconsideration which was denied the same day. Now defendant has filed a notice of appeal and a motion for leave to proceed on appeal in forma pauperis.

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 February 11, 2009 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 Ramiro Martinez's request for leave to proceed in forma pauperis on appeal from this court's orders of February 11, 2009 and March 4, 2009 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 25th day of March, 2009.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge