

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

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VIRGIL SMITH,

Petitioner,

ORDER

v.

05-C-171-C

CATHY JESS, Warden, Dodge Correctional  
Institution,

Respondent.

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This is a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2554. On March 31, 2005, this court entered an order under 28 U.S.C. § 2241(d) transferring this case to the district court for the Eastern District of Wisconsin. Petitioner has now filed a notice of appeal indicating that he wants to appeal that order. I infer that petitioner is requesting a certificate of appealability and permission to proceed in forma pauperis on appeal. Both requests will be denied.

In general, an appeal is permissible only from a “final order” in a habeas proceeding. 28 U.S.C. § 2253. A final order is “one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” Catlin v. United States, 324 U.S. 229, 233 (1945) (construing section 128 of the Judicial Code, 28 U.S.C. § 225(a)). The transfer order in this case did not render judgment on the merits of petitioner’s claim for habeas relief. The case is still alive and is proceeding in the Eastern District. Accordingly,

the order transferring the petition to that court is not a final, appealable order. Accord Van Orman v. Purkett, 43 F.3d 1201, 1203 (8th Cir. 1994) (transfer orders made pursuant to § 2241(d) not appealable, final orders); Dobard v. Johnson, 749 F.2d 1503, 1507 (5th Cir. 1985) (same). Accordingly, petitioner's requests for leave to appeal in forma pauperis from that order and for a certificate of appealability must be denied.

ORDER

Petitioner's requests for a certificate of appealability and for leave to proceed in forma pauperis on appeal are DENIED.

Entered this 10<sup>th</sup> day of May, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge