

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

EDWARD ANDERSON,

Petitioner,

ORDER

v.

05-C-0306-C

DANIEL BENIK, Warden,
Stanley Correctional Institution,

Respondent.

Petitioner Edward Anderson has filed a notice of appeal from this court's judgment of February 22, 2006 denying his petition for a writ of habeas corpus. Because petitioner has not paid the \$255 appellate filing fee, I infer that he seeks leave to proceed *in forma pauperis* on appeal. To be entitled to proceed as a pauper, petitioner must satisfy this court that he is indigent and that he is taking his appeal in good faith. 28 U.S.C. § 1915(a)(1) & (3). As a prisoner seeking habeas corpus relief, petitioner must also satisfy the criteria for the issuance of a certificate of appealability under 28 U.S.C. § 2253(c)(1)(A) and Fed. R. App. P. 22.

To find that an appeal is in good faith, a court need find only 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)).

"Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack, 529 U.S. at 484. Petitioner cannot make this showing. The magistrate judge explained persuasively and thoroughly in his report why petitioner had not been prejudiced by the alleged errors committed by his trial lawyer and the prosecutor and why it was reasonable for the state courts to reject his speedy trial claim. Reasonable jurists would not debate the magistrate judge's conclusion that petitioner's claims fall far short of establishing that he was deprived of any of his constitutional rights. Accordingly, petitioner is not entitled to a certificate of appealability.

Turning to petitioner's request for leave to proceed *in forma pauperis*, I note initially that petitioner has not submitted the 6-month trust fund account statement required by § 1915(a)(2). However, even assuming petitioner could establish that he is indigent, I would still deny his request for leave to proceed *in forma pauperis* because I conclude that his appeal is not taken in good faith. Where, as here, the record shows plainly that the bulk of

petitioner's claims have no factual support, reasonable persons could not suppose his appeal has merit.

ORDER

IT IS ORDERED that petitioner Edward Anderson's request for leave to proceed in forma pauperis on appeal is DENIED because I am certifying that his appeal is not taken in good faith.

Further, IT IS ORDERED that petitioner's request for a certificate of appealability is DENIED. Pursuant to Fed. R. App. P. 22(b), if a district judge denies an application for a certificate of appealability, the defendant may request a circuit judge to issue the certificate.

Entered this 3rd day of April, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge