

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

LUIS VASQUEZ,

Petitioner,

ORDER

v.

05-C-528-C

MATHEW FRANK, Secretary,
PHIL KINGSTON, Warden,
GARY McCAUGHTRY, Former Warden,
MARC CLEMENTS, Security Director,
MIKE THURMER, Deputy Warden,
CYNTHIA THORPE, ORA,
CURTIS JANSSEN, HSCUM,
STEVEN SCHUELER, HSCSS,
BELINDA SCHRUBBE, HSUM,
GARY ANKARLO, PSUS,
RICHARD RAEMISCH, OOS,
SANDRA HAUTAMAKI, CCE,
JAMES MUENCHOW, ICE,
CAPT. O'DONOVAN,
JOHN McDONALD, Social Worker/Advocate, and
STANLEY TONN, ICE,

Respondents.

In an order entered on October 21, 2005, I denied petitioner's request for leave to proceed in forma pauperis in this proposed civil action brought under 42 U.S.C. § 1983 after screening his complaint and concluding that each of his claims was legally meritless.

Subsequently, petitioner filed a motion pursuant to Fed. R. Civ. P. 59 to alter or amend the judgment of dismissal. I denied that motion in an order dated November 8, 2005. Now petitioner has filed a notice of appeal, which is accompanied by a motion for leave to proceed on appeal in forma pauperis.

In determining whether petitioner may appeal in forma pauperis, I must consider whether he has three strikes under 28 U.S.C. § 1915(g) and, if not, whether he is indigent and whether his appeal is taken in good faith. Petitioner does not have three strikes and I am aware from the trust fund account statement he submitted that he is indigent. Nevertheless, petitioner cannot proceed in forma pauperis on appeal because I must certify that his appeal is not taken in good faith.

The Court of Appeals for the Seventh Circuit has instructed district courts to find bad faith where a petitioner is appealing the same claims the district court found to be without legal merit in his complaint. Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000). Petitioner states that he intends to appeal this court's findings with respect to each of his claims. Because he is attempting to raise on appeal the same legally meritless claims he raised in his complaint in this court, I must certify his appeal as not being taken in good faith.

Because I am certifying petitioner's appeal as not having been taken in good faith, petitioner cannot proceed with his appeal without prepaying the \$255 filing fee unless the court of appeals gives him permission to do so. Pursuant to Fed. R. App. P. 24, petitioner 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. Petitioner should be aware that if the court of appeals agrees with this court that the appeal is not taken in good faith, it will send him an order requiring him to pay all of the filing fee by a set deadline. If petitioner fails to pay the fee within the deadline set, the court of appeals ordinarily will dismiss the appeal and order this court to arrange for collection of the fee from petitioner's prison account.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that petitioner's appeal is not taken in good faith.

Entered this 9th day of December, 2005.

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