

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

MICHAEL MASON,

Petitioner,

v.

DANIEL BENIK, Warden,
Stanley Correctional Institution,

Respondent.

ORDER

05-C-615-C

On March 17, 2006, this court entered an order denying petitioner's request for a writ of habeas corpus under 28 U.S.C. § 2254. Now before the court is petitioner's request for a certificate of appealability permitting him to challenge the denial of his petition under 28 U.S.C. §§ 2253(c). 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.

A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Walker

v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000). To meet this burden, a petitioner must demonstrate that “reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” Miller-El, 537 at 322.

Petitioner has not satisfied this standard. As explained in the opinion and order denying the habeas petition, petitioner presented no evidence or arguments to refute the state appellate court’s determination that there was no factual basis either to petitioner’s claim that his lawyer had performed deficiently or that the trial court had relied on erroneous and improper information when imposing sentence. Absent a valid factual basis for his claims, petitioner has not come close to showing the denial of any constitutional right.

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

ORDER

IT IS ORDERED that petitioner Michael Mason'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 17th day of April, 2006.

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