

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

LARRY L. HORTON,

Petitioner,

v.

ORDER

UNITED STATES OF AMERICA,

06-C-388-S
05-CR-89-S-01

Respondent.

On September 20, 2006 judgment was entered in the above entitled matter denying petitioner's motion to vacate his sentence under 28 U.S.C. § 2255 with prejudice. On October 10, 2006 the Court received petitioner's notice of appeal which is construed as a request to proceed in forma pauperis and a request for a certificate of appealability.

A certificate of appealability may be issued only if the petitioner has shown the denial of a constitutional right. Petitioner has not shown the denial of a constitutional right. Accordingly, petitioner's request for a certificate of appealability will be denied.

____ In Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997), the United States Court of Appeals discussed the determination of whether an appeal is taken in bad faith as follows:

Frivolousness is an objective inquiry; "good faith" implies a subjective standard. But judges lack access to the plaintiff's mental processes. Thoughts must be inferred from acts. A plaintiff who has been told that the claim is foreclosed and then files a notice of appeal without offering any argument to undermine the district court's conclusion is acting in bad faith.

On September 19, 2006 petitioner was advised that in future proceedings he must offer argument not cumulative of that already provided to undermine the Court's conclusion that his motion must be denied. Petitioner has not provided such argument. Accordingly, the Court finds that petitioner's appeal is taken in bad faith, and his request to proceed in forma pauperis on appeal will be denied.

ORDER

IT IS ORDERED that petitioner's request for a certificate of appealability is DENIED.

IT IS ORDERED that petitioner's request to proceed in forma pauperis on appeal is DENIED.

Entered this 16th day of October, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge