

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD L. GASSER,

Defendant.

ORDER

05-CR-0171-C

07-C-0416-C

Defendant Donald L. Gasser filed with the court of appeals a document entitled “Motion to Take Judicial Notice of the De Recto Habeas Corpus.” The court of appeals construed defendant’s submission as a notice of appeal from this court’s August 3, 2007 order denying his motion for post-conviction relief. It has notified this court of its construction of the submission so that this court can address the questions whether defendant may proceed in forma pauperis on appeal (defendant has not paid the \$455 fee for filing his appeal) and whether defendant is entitled to a certificate of appealability. The answer is no to both questions.

According to Fed. R. App. P. 24(a), a defendant who is found eligible for court-

appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization “unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed. . . .” Defendant had court-appointed counsel. Therefore, he can proceed in forma pauperis on appeal unless I find that his appeal is taken in bad faith. In this case a reasonable person could not suppose that the appeal has some merit, as is required in order for the appeal to be taken in good faith. Therefore, I will deny defendant’s request to proceed in forma pauperis on appeal.

The standard for deciding whether to issue a certificate of appealability is more demanding than the standard for determining good faith. Walker v. O'Brien, 216 F.3d 626, 631 (7th Cir. 2000). None of defendant's challenges to his sentence meet the demanding standard for a certificate of appealability. In the order denying defendant’s § 2255 motion, I explained clearly why his § 2255 motion was denied as untimely. Because the issue defendant wishes to raise on appeal is not debatable among reasonable jurists, a court could not resolve the issues differently and the question is not adequate to deserve encouragement to proceed further, I am declining to issue a certificate of appealability.

Defendant has the right to appeal this order denying him a certificate of appealability.

ORDER

IT IS ORDERED that defendant Donald Gasser's request for a certificate of appealability and motion for leave to appeal in forma pauperis are DENIED.

Entered this 13th day of September, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge