

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

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WENDELL DWAYNE O'NEAL,  
202 Honorway  
Madison, Alabama 35758,

Petitioner,

v.

K.A., SUPER U.S.A., INC., 3807 FREEMONT  
AVE., N., MINNEAPOLIS, MINNESOTA;  
P.O. RABINE, P.O. MURO, 330 E. 38th  
STREET, MINNEAPOLIS, MINNESOTA  
55409, SGT. GREGORY FREEMAN, 350 S. 5th  
STREET, MINNEAPOLIS, MN. 55487,  
MINNEAPOLIS DEPT. OF POLICE, 350 S. 5th  
STREET, MINNEAPOLIS, MN. 55487, CITY  
OF MINNEAPOLIS, 350 S. 5th STREET,  
MINNEAPOLIS, MINNESOTA 55487;  
UNKNOWN HENNEPIN COUNTY DEPUTY  
SHERIFF; PATRICK McGOWAN, HENNEPIN  
COUNTY SHERIFF; HENNEPIN COUNTY  
ADULT DETENTION CENTER, 401 S. 4th  
AVENUE, MINNEAPOLIS, MINNESOTA 55487;  
COUNTY OF HENNEPIN, 300 S. 6th STREET,  
MINNEAPOLIS, MINNESOTA 55487;  
LEE BARRY, ASST. D.A., BEVERLY BENSON,  
ASST. D.A., HENNEPIN. COUNTY DISTRICT  
ATTORNEYS' OFFICE, 300 S. 6th STREET.  
MINNEAPOLIS, MINNESOTA 55487,  
JOINTLY/SEVERALLY/OFFICIALLY, AS POLICE  
AGENTS/GOV. AGENCIES AND, OR MUNICIPALITIES,

Respondents.

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ORDER

06-C-40-C

On April 18, 2006, I denied petitioner Wendell Dwayne O'Neal leave to proceed in forma pauperis in this action because his allegations of wrongdoing were legally meritless. Judgment was entered that same day. Now petitioner has filed a notice of appeal, together with an affidavit of indigency supporting a request for leave to proceed on appeal in forma pauperis. The request will be denied.

In determining whether petitioner may appeal in forma pauperis, I must consider whether he is indigent and whether his appeal is taken in good faith. 28 U.S.C. § 1915(a)(1) and (3). Although I have determined that petitioner is indigent, he cannot proceed in forma pauperis on appeal because I must certify that his appeal is not taken in good faith.

I presume petitioner intends to raise on appeal the claims he raised in his complaint. 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). Because petitioner 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.

#### 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 May, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge