

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

MICHAEL MARKS,

Petitioner,

v.

ORDER

PHIL KINGSTON,

06-C-340-S

Respondent.

On August 29, 2006 judgment was entered in the above entitled matter dismissing petitioner's petition for a writ of habeas corpus with prejudice. Petitioner's motion for reconsideration was denied on September 18, 2006.

On September 25, 2006 the Court received a request for a certificate of appealability and a notice of appeal which the Court construes as a request to proceed in forma pauperis on appeal from petitioner.

A certificate of appealability may be issued only if the petitioner has shown the denial of a constitutional right. Petitioner's petition was dismissed with prejudice because petitioner's counsel was not ineffective. He 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.

Petitioner was advised on August 29, 2006 that in future proceedings he must offer reasons why his petition should not have been dismissed. He has not provided these reasons. 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 26th day of September, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge