

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

RODOSVALDO POZO,

Petitioner,

v.

ORDER

WARDEN RICHARD SCHNEITER,

06-C-464-S

Respondent.

On September 28, 2006 judgment was entered in the above entitled matter dismissing petitioner's petition for a writ of habeas corpus with prejudice for lack of jurisdiction. On October 4, 2006 the Court received from petitioner 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.

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 of lack of jurisdiction. 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 September 28, 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 5th day of October, 2006.

BY THE COURT:

____s/_____
JOHN C. SHABAZ
District Judge