

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

LUIS EDUARDO PENA-MALDONADO,

Defendant.

ORDER

06-cr-142-jcs
08-cv-151-bbc

Defendant Luis Eduardo Pena-Maldonado has filed a request for a certificate of appealability from the order entered in this case on March 21, 2008 denying his motion for post-conviction relief brought pursuant to 28 U.S.C. § 2255. In addition, he has filed an affidavit of indigency, which suggests that he intended also to file a notice of appeal and request leave to proceed in forma pauperis with the appeal. Therefore, I am construing the request for a certificate of appealability to include a notice of appeal.

According to 28 U.S.C. § 1915(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 and certify that his appeal is not taken in good faith.

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 defendant’s § 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. Therefore, I am declining to issue a certificate of appealability.

Defendant has the right to appeal this order denying him a certificate of appealability and certifying his appeal as not taken in good faith.

ORDER

IT IS ORDERED that defendant Luis Eduardo Pena-Maldonado's request for leave to proceed in forma pauperis on appeal and his request for a certificate of appealability are DENIED. I certify that defendant's appeal is not taken in good faith.

Entered this 7th day of August, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge