

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES T. SMITH,

Defendant.

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ORDER

99-C-0741-C  
96-CR-0076-C-01

Defendant James T. Smith has filed a notice of appeal from a letter sent to him on January 10, 2005 by the Pro Se Case Analyst, advising defendant that this court had enforced its order of July 1, 2003, with respect to a successive petition for a writ of habeas corpus he submitted on November 22, 2004. In the July 1 order, I detailed defendant's long history of filing successive § 2255 petitions without first obtaining permission to do so from the court of appeals. I concluded that defendant's disregard of this court's orders and the requirements of the AEDPA was intentional. For that reason, I ordered the clerk of court to forward any further documents from defendant to me before filing. If I determined that the document included a challenge to defendant's conviction or sentence and was not

accompanied by an order of the court of appeals permitting the filing, then I would place the document in the file and make no response to it.

Although defendant filed a notice of appeal, he did not file a request for the issuance of a certificate of appealability or an affidavit of indigency. Construing the notice of appeal to include both, I will deny him leave to proceed in forma pauperis on appeal and decline to issue a certificate of appealability.

Defendant's notice of appeal is nothing more than a continuation of his game-playing. I certify that his appeal is not taken in good faith and that for this reason, he is not entitled to proceed in forma pauperis on appeal.

Furthermore, a certificate of appealability shall issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This means that a district court must find that the issues the applicant wishes to raise are ones that "are debatable among jurists of reason; that a court *could* resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further." Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983). Defendant's appeal falls far short of satisfying any of these requirements. It is not debatable that he may not file repeated motions to vacate his sentence pursuant to 28 U.S.C. § 2255 without obtaining advance permission to do so from the court of appeals.

ORDER

IT IS ORDERED that defendant James T. Smith's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that his appeal is not taken in good faith. Further, IT IS ORDERED that defendant's request for issuance of a certificate of appealability is DENIED.

Entered this 14th day of February, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge