

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

BOBBY MARVIN COLLINS,

Petitioner,

v.

WARDEN RICARDO MARTINEZ,

Respondent.

ORDER

07-C-0130-C

On April 3, 2007, I dismissed this action, improperly titled a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241, for lack of jurisdiction. Specifically, I found that petitioner was challenging the validity of his conviction and sentence in the District Court for the District of Minnesota, that he had already filed a § 2255 motion in that court which had been denied, and that the only avenue available to him to continue his challenge was to obtain permission from the Eighth Circuit Court of Appeals to file a successive challenge. Now petitioner has filed a notice of appeal. Because the notice is not accompanied by the \$455 fee for filing an appeal, I construe the notice to include a request leave to proceed in forma pauperis on appeal. The request will be denied because I must certify that petitioner's appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3).

Petitioner does not assert that this court erred in interpreting the allegations of his petition as challenging the validity of his conviction. Rather, he appears to want an opinion from the court of appeals whether it was error for this court to refuse to consider his challenges despite the lack of jurisdiction to do so. Although I understand petitioner's frustration at being jurisdictionally barred from raising his challenges here, particularly in view of the fact that he already has been unsuccessful in obtaining a favorable ruling on his § 2255 motion in the sentencing court, the claim he wishes to raise on appeal is legally frivolous. Therefore, his request for leave to proceed in forma pauperis on appeal will be denied.

If petitioner intends to challenge this court's certification that his appeal is not taken in good faith, he has 30 days from the date he receives this order in which to file with the court of appeals a motion for leave to proceed in forma pauperis on appeal. His motion must be accompanied by a copy of the affidavit prescribed in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on

appeal is DENIED and I certify that petitioner's appeal is not taken in good faith.

Entered this 12th day of April, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge