

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

STEVEN ALAN MAGRITZ,

Petitioner,

v.

ORDER

07-C-350-C

JAMES E. DOYLE,
C. WILLIAM FOUST,
MATTHEW J. FRANK,
EMILY DAVIDSON and
CHRIS KAMIN,

Respondents.

In an order dated July 12, 2007, I denied petitioner Steven Magritz's request for leave to proceed in forma pauperis in this civil action brought pursuant to 42 U.S.C. § 1983 on a claim that a condition of petitioner's parole is unconstitutional. In particular, I advised petitioner that the Court of Appeals for the Seventh Circuit has held that a petitioner's challenge to one or more condition of parole is a challenge to the parolee's custody and, therefore, must be raised in a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254, after the petitioner exhausts his state court remedies. Judgment of dismissal was entered on July 16, 2007. Now petitioner has filed a notice of appeal.

Because petitioner's notice of appeal is not accompanied by the \$455 fee for filing an appeal, I construe petitioner's notice as including a request for leave to proceed on appeal under the in forma pauperis statute, 28 U.S.C. § 1915. Pursuant to § 1915 (a)(3), an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith. Such certification appears appropriate in this case.

The legal precedent set down by the Court of Appeals for the Seventh Circuit cited in the order denying petitioner leave to proceed in this court is directly on point. Nevertheless, petitioner filed a notice of appeal, without citing any new law that might affect this court's decision, any improper interpretation of existing law, or any factual information in the proposed complaint that might have been missed in ruling on his request. Petitioner appears simply to wish to press an argument that this court should have considered the merits of his claim rather than dismissing his case for his failure to bring the claim in a habeas corpus action after he exhausts his state court remedies. This is an issue that the court of appeals has already considered and rejected. As much as I understand petitioner's disappointment that he cannot obtain a ruling on the merits of his claim using the vehicle he selected in this case, his appeal of a settled matter is an appeal that would do nothing more than waste limited judicial resources. Therefore, I certify that plaintiff's appeal is not taken in good faith.

ORDER

IT IS ORDERED that petitioner Steven Magritz's request to proceed in forma pauperis on appeal is DENIED. I certify that petitioner's appeal is not taken in good faith.

Entered this 7th day of August, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge