

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

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HAROLD LEROY FISHER, JR.,

Petitioner,

v.

CAROL HOLINKA, Warden,

Respondent.  
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ORDER

07-cv-639-bbc

More than two years ago, the court denied petitioner Harold Leroy Fisher, Jr.'s petition for a writ of habeas corpus on his claim that he was improperly denied credit on his federal sentence. Dkt. #25 (judgment entered June 3, 2008). Petitioner appealed unsuccessfully. Dkt. #37 (judgment from court of appeals, entered May 18, 2009). Recently, petitioner decided to raise new challenges, moving for recusal and for relief from judgment under Fed. R. Civ. P. 60. However, I denied those motions, explaining in detail why recusal was not appropriate and explaining that none of petitioner's Rule 60 challenges could succeed because they came too late and because his allegations of fraud were inadequate. On June 7, 2010, I denied his motions for reconsideration of the denial of his motions for recusal and for relief from judgment, dkts. ##41 and 42.

Now before the Court is petitioner's notice of appeal of my June 7, 2010 order. Because petitioner has not paid the \$455 fee for filing an appeal, I will construe his notice as a request to proceed in forma pauperis. A district court has authority to deny a request for leave to proceed in forma pauperis under 28 U.S.C. § 1915 for one or more of the following reasons: the litigant wishing to take an appeal has not established indigence; the appeal is taken in bad faith; or the litigant is a prisoner and has three strikes. § 1915(a)(1),(3) and (g). Sperow v. Melvin, 153 F.3d 780, 781 (7th Cir. 1998). Petitioner's request for leave to proceed in forma pauperis on appeal will be denied because I am certifying that his appeal is not taken in good faith.

In Lucien v. Roegner, 682 F.2d 625, 626 (7th Cir. 1982), the court of appeals instructed district courts to find bad faith in cases in which a plaintiff is appealing the same claims the court found to be without legal merit. Lee v. Clinton, 209 F.3d 1025, 1027 (7th Cir. 2000). Petitioner is trying to appeal the same issues that I have found to be without legal merit twice in denying his motion for relief from judgment and his motion for recusal. Because there is no legally meritorious basis for petitioner's appeal, I must certify that the appeal is not taken in good faith.

Because I am certifying petitioner's appeal as not having been taken in good faith, he cannot proceed with his appeal without prepaying the \$455 filing fee unless the court of appeals gives him permission to do so. Under Fed. R. App. P. 24, petitioner has 30 days

from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. With his motion, he must include an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), with a statement of issues he intends to argue on appeal. Also, he must send along a copy of this order. Petitioner should be aware that he must file these documents in addition to the notice of appeal he has filed previously.

If petitioner does not file a motion requesting review of this order, the court of appeals may not address the denial of leave to proceed in forma pauperis on appeal. Instead, it may require petitioner to pay the entire \$455 filing fee before it considers his appeal. If petitioner does not pay the fee within the deadline set, it is possible that the court of appeals will dismiss the appeal.

#### ORDER

IT IS ORDERED that petitioner Harold Fisher's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that his appeal is not taken in good faith.

Entered this 3d day of August, 2010.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge