

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

EARL DIEHL,

Petitioner,

ORDER

v.

08-cv-133-bbc

MICKEY MCCASH, Warden,
Oregon Correctional Center,

Respondent.

Petitioner Earl Diehl has filed a motion for leave to proceed in forma pauperis on appeal from this court's judgment entered August 22, 2008, denying his petition for a writ of habeas corpus. Petitioner challenged the lawfulness of his custody resulting from the revocation of his probation, alleging numerous procedural irregularities during the state administrative and court proceedings. He seeks to appeal all of the claims raised in the petition. Having reviewed the motion and reconsidered the claims raised by petitioner, I am denying his request for leave to proceed in forma pauperis on appeal because his claims are not brought in good faith. To find that an appeal is in good faith, a court need find only that a reasonable person could suppose the appeal has some merit. Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000). In this case, several of petitioner's claims are based upon theories that this court has found have no merit. As explained in previous orders, the fact that the Department of Corrections failed to adhere strictly to its internal procedures during

the revocation procedures and released petitioner temporarily to Jefferson County authorities for sentencing on a different case did not violate petitioner's federal rights to due process or subject him to double jeopardy. The only one of petitioner's claims that rests on a solid legal foundation is his claim that he was deprived of due process when the department failed to provide him with a final revocation hearing until 101 days after he was taken into custody. This claim, however, is dead on arrival because the record clearly supports the state courts' finding that petitioner was responsible for the numerous postponements of the hearing.

In sum, because no reasonable person could think there is any merit to petitioner's claims, I must deny his application for leave to proceed in forma pauperis.

ORDER

IT IS ORDERED that petitioner Earl Diehl's motion for leave to proceed in forma pauperis on appeal is DENIED because I certify that his appeal is not taken in good faith.

Entered this 17th day of September, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge