

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JULIO JOSE LEON SANCHEZ,

Defendant.

ORDER

08-cv-243-bbc

06-cr-88-jcs

Defendant Julio Jose Leon Sanchez has filed a notice of appeal from the court's June 9, 2008 order and judgment denying his motion for post-conviction relief brought pursuant to 28 U.S.C. § 2255. Although defendant has not asked this court to issue a certificate of appealability, such a certificate is required if he is to take an appeal from the denial of his § 2255 motion, 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, it is necessary to decide whether a certificate of appealability should issue. In addition, defendant has not paid the \$455 filing fee which makes it necessary to decide whether he is entitled to proceed on appeal in forma pauperis.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-

appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization “unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed.” Defendant had court-appointed counsel during the criminal proceedings against him and I do not intend to certify that his appeal is not taken in good faith. Defendant’s challenge to his sentence is not wholly frivolous. A reasonable person could suppose that it has some merit. Cf., Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000). Therefore, I will grant him leave to proceed on appeal in forma pauperis.

As to the certificate of appealability, a certificate shall issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” § 2253(c)(2). Before issuing a certificate of appealability, 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). “[T]he standard governing the issuance of a certificate of appealability is not the same as the standard for determining whether an appeal is in good faith. It is more demanding.” Walker v. O’Brien, 216 F.3d 626, 631 (7th Cir. 2000). Defendant contends that his conviction and sentence are illegal on several grounds: (1) neither his trial counsel nor his appellate counsel provided him constitutionally adequate counsel; (2) the mandatory sentencing

guidelines are a violation of Art. I, §§ 2 and 3 of the United States Constitution; (3) the charges against him should have been prosecuted in state court because they were actually state charges growing out of a related civil suit; (4) his minor son was subjected to an illegal search; and (5) subjecting him to a term of supervised release is illegal in a number of respects. In deciding the motion, I found that petitioner had failed to support these allegations with evidence showing his entitlement to relief. Although I believe that it was proper to deny defendant's § 2255 motion, I cannot say that a reasonable judge would not make a different decision. Therefore, I will issue a certificate of appealability.

ORDER

IT IS ORDERED that defendant Julio Jose Leon Sanchez's request for leave to proceed in forma pauperis on appeal and his request for a certificate of appealability are GRANTED.

Entered this 11th day of August, 2008.

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