

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

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JAMES ALFRED SMITH, JR.,

Petitioner,

ORDER

v.

08-cv-641-slc

MICHAEL THURMER, Warden,  
Waupun Correctional Institution,

Respondent.

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James Alfred Smith, Jr. has filed a notice of appeal from my November 21, 2008 order and judgment dismissing his petition for a writ of habeas corpus without prejudice. I dismissed the petition on the ground that petitioner had not alleged facts sufficient to state valid cognizable claims.

Pursuant to 28 U.S.C. § 2253(c), a petitioner may not appeal from a final order in a habeas corpus proceeding “in which the detention complained of arises out of process issued by a State court” unless the district court grants him a certificate of appealability. However, this provision does not apply to petitioner because the detention he is complaining of in his habeas petition arose from prison disciplinary proceedings, not state court proceedings.

Petitioner’s request for leave to proceed in forma pauperis will be denied because I certify that his appeal is not taken in good faith. I denied his petition without prejudice,

meaning that petitioner could submit a new petition containing additional facts to support his claims. Given that petitioner has not suffered any prejudice as a result of my order, no reasonable person could suppose there is any merit to petitioner's taking an appeal. Further, petitioner has given no indication that any facts exist to support his claims or presented any argument why I was wrong to dismiss the petition. Accordingly,

ORDER

IT IS ORDERED THAT:

1. Petitioner's request for leave to proceed in forma pauperis is DENIED pursuant to Fed. R. App. P. 24(a)(3)(A) because I certify that his appeal is not taken in good faith.

Entered this 29<sup>th</sup> day of December, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge