

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT LEE McNEAL,

Defendant.

ORDER

05-cr-1-bbc
09-cv-234-bbc

On January 31, 2012, defendant Robert Lee McNeal filed a motion for equitable tolling of his April 20, 2009 post conviction motion under 28 U.S.C. § 2255. In an order entered on February 21, 2012, I construed defendant's motion as one brought pursuant to 28 U.S.C. § 2255 and denied it for lack of jurisdiction because it had not been certified by the court of appeals as is required under 28 U.S.C. § 2255.

Now defendant has filed a notice of appeal. He has not paid the \$455 fee that is required if he is to take an appeal from the denial of a § 2255 motion. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I will construe defendant's notice as including a request for leave to proceed in forma pauperis on appeal under 28 U.S.C. § 1915.

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.” I do not need to decide whether defendant is indigent because I am certifying that the appeal is not taken in good faith. In this case a reasonable person could not suppose that the appeal has some merit, as is required in order for the appeal to be taken in good faith.

The law is clear on the subject of successive appeals. It is not debatable that defendant is prohibited from filing a second motion to vacate his sentence under 28 U.S.C. § 2255, no matter what he titles his motion, without obtaining advance permission to do so from the court of appeals. Therefore, I will deny defendant’s request to proceed in forma pauperis on appeal.

ORDER

IT IS ORDERED that defendant Robert Lee McNeal’s request to proceed in forma pauperis on appeal is DENIED.

Further, IT IS ORDERED that if defendant files any further documents in this case, the clerk of court is directed to forward them to chambers before filing them. If I determine that the document includes a challenge to defendant's conviction or sentence and is not

accompanied by an order of the Court of Appeals for the Seventh Circuit permitting the filing, then I will place the document in the file of this case and make no response to it.

Entered this 6th day of March, 2012.

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