

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

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

v.

09-cr-114-bbc

MICHAEL STARK,

Defendant.

Defendant Michael Stark has filed a notice of appeal of the court's October 26, 2015 order denying his motion under 18 U.S.C. § 3582 and his motion for reconsideration of his claim for a three-level downward adjustment in his sentence for acceptance of responsibility.

Defendant's notice of appeal was not accompanied by the \$505 fee for filing an appeal. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I construe it 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)(3), "an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." In Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000), the Court of Appeals for the Seventh Circuit ruled that an

appeal is not taken in “good faith” if it is based on a “frivolous claim” that is, “a claim that no reasonable person could suppose to have any merit.” Id. at 1026. Defendant’s claim is not “fantastical,” as were the claims in Lee, in which the allegation was that the United States and China were engaged in a conspiracy to invade and infect certain people with a mind reading device. I cannot say that petitioner’s appeal is of that type or that it is wholly without merit. However, it is a claim so clearly foreclosed by the governing law that no reasonable person would suppose it has merit.

ORDER

IT IS ORDERED that defendant Michael Stark’s request for leave to proceed in forma pauperis on appeal is DENIED.

Entered this 5th day of November, 2015.

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