

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. Thereafter, on March 1, 2012, defendant filed a notice of appeal. Because his appeal was not accompanied by the \$455 fee, I construed his notice as including a request for leave to proceed in forma pauperis on appeal under 28 U.S.C. § 1915. In an order entered on March 8, 2012, I denied defendant's request to proceed in forma pauperis on appeal because I certified that his appeal was not

not taken in good faith. Because I denied defendant's motion for lack of jurisdiction, I did not think it appropriate to take further action on the motion so I did not address the issuance of a certificate of appealability in the March 6, 2012 order. If such a determination is required, I would not grant a certificate because defendant has not made a substantial showing of a denial of a constitutional right.

ORDER

IT IS ORDERED that defendant Robert Lee McNeal's request for a certificate of appealability is DENIED.

Entered this 16th day of March, 2012.

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