

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL TEPOEL,

Defendant.

ORDER

10-cv-629-bbc

In an order entered on December 13, 2010, I denied defendant Daniel Tepoel's motion for post conviction relief under 28 U.S.C. § 2255, dkt. #6. On December 23, 2010, defendant filed a timely notice of appeal and a request for a certificate of appealability from the denial of his § 2255 motion, dkt. #8. Because his notice was not accompanied by the \$455.00 filing fee, I construed the notice as including a request for leave to proceed in forma pauperis on appeal. In an order dated December 27, 2010, dkt. #11, I granted defendant's request to proceed on appeal in forma pauperis and denied his request for a certificate of appealability. On January 6, 2011, the clerk of court certified and transmitted the record to the court of appeals.

On January 14, 2011 defendant filed a motion to withdraw his notice of appeal stating that he does not have the money to file the appeal. I denied his motion in an order dated January 24, 2011, dkt. #14, because I had already granted him leave to proceed on appeal in forma pauperis and the record had already been forwarded to the court of appeals.

Now defendant has filed a motion under Fed. R. Civ. P. 59(e) to alter or amend the January 24, 2011 order. He states that the court mistakenly construed his notice of appeal as including a request to proceed in forma pauperis on appeal even though he did not request in forma pauperis status or submit a financial affidavit in support thereof. Defendant further points to a discrepancy in the in forma pauperis language in the court's December 2, 2010 order. The substance of the language is accurate, but the citation was incorrect. The correct citation should be Fed. R. App. 24(a)(3)(A). This typographical error makes no difference in the outcome of the order. When defendant filed his notice of appeal on December 16, 2010, he did not include the required \$455.00 filing fee. Because his filing was not accompanied by the required fee, the court construed his notice of appeal as including a request to proceed in forma pauperis on appeal.

Nothing in defendant's motion convinces me that it was error to deny his motion to withdraw his notice of appeal.

ORDER

IT IS ORDERED that defendant's motion to alter or amend the court's January 24, 2011 is DENIED.

Entered this 9th day of February, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge