

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL TEPOEL,

Defendant.

ORDER

07-cr-66-bbc

10-cv-629-bbc

On October 20, 2010 defendant Daniel Tepoel filed a motion for post conviction relief under 28 U.S.C. § 2255, contending that the court deprived him of his rights by not ordering a competency evaluation of his ability to represent himself at his criminal trial. After reviewing the parties' briefs, I denied the motion on December 13, 2010. On December 23, 2011, defendant filed a notice of appeal and a request for a certificate of appealability. Because defendant's notice of appeal was not accompanied by the \$455.00 required filing fee required, 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 dated December 27, 2010, I granted defendant leave to proceed on appeal in forma pauperis but declined to issue a certificate of appealability. On January 14, 2011, defendant moved to withdraw his notice

of appeal, asserting that he did not have the money to pay the fee and that the court was wrong when it construed his failure to pay the required filing fee as a motion to proceed on appeal in forma pauperis. In an order dated January 24, 2011, I denied his motion to withdraw his notice of appeal and determined that he was still responsible for payment of the filing fee. Unhappy with the outcome of that order, on February 4, 2011 defendant filed a motion to alter or amend the January 24, 2011 order. His request was denied in an order dated February 9, 2011.

While defendant was busy filing motions with this court, he failed to file the required docketing statement with the court of appeals. On February 24, 2011, the court of appeals dismissed defendant's appeal for his failure to do so under Circuit Rule 3(c).

Now defendant has filed a document entitled "60(b)(4) motion" in which he asks the court to reconsider its orders of December 27, 2010, January 24, 2011 and February 11, 2011. Defendant continues to assert that it was error for the court to assume that defendant wished to proceed in forma pauperis on appeal, that he should owe no filing fee and that the money already deducted from his prison account toward the filing fee should be refunded. Defendant's motion will be denied. Nothing in defendant's submission convinces that I erred in the December 27, 2010, January 24, 2011 and February 11, 2011 orders.

ORDER

Defendant's motion under Rule 60(b)(4) is DENIED.

Entered this 30th day of March, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge