

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANGEL SERVIN,

Defendant.

ORDER

10-cv-815-bbc
09-cr-80-bbc

On January 31, 2011, defendant filed with the Court of Appeals for the Seventh Circuit a notice of appeal and request for a certificate of appealability from the January 3, 2011 order and January 4, 2011 judgment entered in this case denying his § 2255 motion. The court of appeals forwarded the notice of appeal to this court for processing.

Defendant's notice of appeal was not accompanied by the \$455 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 pursuant to 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.” Defendant had court-appointed counsel at trial. Therefore, he can proceed on appeal unless I find that his appeal is taken in bad 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 re-asserting claims that were raised on direct appeal. Defendant did not take a direct appeal of his conviction and the issues he raised in his § 2255 motion were issues that he could have raised on direct appeal. Therefore, he is precluded from raising those issues in a § 2255 motion. I cannot find that defendant’s appeal is taken in good faith.

As to the certificate of appealability, I denied defendant’s request in the January 3, 2011 order denying his § 2255 motion. I need not rule on it again. Defendant’s notice of appeal sent to the court of appeals appears to be a challenge to a circuit judge of the district court’s denial of his request for a certificate of appealability.

ORDER

Defendant Angel Servin’s motion to proceed in forma pauperis on appeal is DENIED because I am certifying that his appeal is not taken in good faith.

Further, IT IS ORDERED that defendant’s request for a certificate of appealability

is DENIED as previously ruled on. Pursuant to Fed. R. App. P. 22(b), if a district judge denies an application for a certificate of appealability, the defendant may request a circuit judge to issue the certificate. A copy of defendant's notice of appeal and request for a certificate of appealability will be forwarded to the court of appeals along with a copy of this order so that it can address the appeal of the denial of the certificate of appealability.

Entered this 7th day of February, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge