

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT MICHENER,

Defendant.  
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ORDER

08-cr-47-bbc

11-cv-171-bbc

Defendant Robert Michener has filed a notice of appeal and a request for a certificate of appealability from the May 23, 2011 order denying his post conviction motion under 28 U.S.C. § 2255 and from the June 30, 2011 order denying his Rule 59 motion.

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 appointed counsel during the criminal proceedings against him and I do not intend to certify that the appeal is not taken in good faith. Defendant's challenge to his sentence is not wholly frivolous. A reasonable person could suppose that it has some merit. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

As to defendant's request for a certificate of appealability, such a certificate was denied in the May 23, 2011 and June 30, 2011 orders.

#### ORDER

IT IS ORDERED that defendant Robert Michener's request for leave to proceed in forma pauperis on appeal is GRANTED. His request for a certificate of appealability was previously denied in the March 23, 2011 order and affirmed in the June 30, 2011 order denying his motion for reconsideration under Rule 59.

Entered this 26th day of August, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge