

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

CAINE J. WILLE,

Plaintiff,

v.

JEFF HENRY, *et al.*,

Defendants.

ORDER

13-cv-812-wmc
App. No. 13-3858

State inmate Caine J. Wille filed this proposed action against four officers employed by the Prairie du Chien Police Department pursuant to 42 U.S.C. § 1983, challenging the validity of a state court conviction from the Circuit Court for Crawford County, Wisconsin. Finding that his claims were barred, the court denied his request for leave to proceed and dismissed the complaint as legally frivolous. *See Moore v. Pemberton*, 110 F.3d 22, 24 (7th Cir. 1997) (A complaint that is barred by *Heck v. Humphrey* is considered legally frivolous and counts as a “strike” under 28 U.S.C. § 1915(g)). Wille has filed a notice of appeal. Because he has not paid the \$505.00 appellate docketing fee, he presumably requests leave to proceed *in forma pauperis* on appeal.

In determining whether a litigant is eligible to proceed *in forma pauperis* on appeal, the court must find that he is indigent and, in addition, that the appeal is taken in good faith for purposes of Fed. R. App. P. 24(a)(3). *See* 28 U.S.C. § 1915(a)(3) (“An appeal may not be taken *in forma pauperis* if the court certifies in writing that it is not taken in good faith.”). Although Wille has qualified as indigent in this case, the court cannot certify that the appeal is taken in good faith. In that respect, the United States Court of Appeals for the Seventh Circuit has instructed district courts to find bad faith where a plaintiff is appealing claims that have been dismissed as frivolous. *See Lee v. Clinton*, 209

F.3d 1025, 1026-27 (7th Cir. 2000). To the extent that Wille is attempting to raise on appeal the same legally frivolous claims he raised in his complaint, the court certifies that the appeal is not taken in good faith for purposes of Fed. R. App. P. 24(a)(3). Accordingly, his implicit request for leave to proceed *in forma pauperis* on appeal must be denied.

ORDER

IT IS ORDERED that:

1. The court CERTIFIES that the appeal is not taken in good faith for purposes of Fed. R. App. P. 24(a)(3).
2. Plaintiff Caine J. Wille's request for leave to proceed *in forma pauperis* on appeal is DENIED.
3. Although this court has certified that the appeal is not taken in good faith under Fed. R. App. P. 24(a)(3), Wille is advised that he may challenge this finding pursuant to Fed. R. App. P. 24(a)(5), by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, United States Court of Appeals for the Seventh Circuit, within thirty (30) days of the date of this order.

Entered this 6th day of January, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge