

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

DANNY TURNER,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

ORDER

08-cr-22-bbc
14-cv-838-bbc

Petitioner Danny Turner has filed a notice of appeal and a request for a certificate of appealability from the March 25, 2015 order denying his post conviction motion under 28 U.S.C. § 2255 and from the April 28, 2015 order denying his Rule 59 motion. Although it appears that the appeal is untimely, it is not within this court's authority to determine the timeliness of an appeal; that decision is for the court of appeals to make.

Petitioner's notice of appeal was not accompanied by the \$505 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 under 28 U.S.C. § 1915. According to 28 U.S.C. § 1915(a)(3), "an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." In Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000), the Court of Appeals for the Seventh Circuit ruled that "good

faith” was to be read as synonymous with “frivolous,” or more precisely, as “not frivolous.” In this context, the meaning of “frivolous” does not mean only “fantastical,” as were the claims in Lee, in which the allegation was that the United States and China were engaged in conspiracy to invade and infect certain people with a mind reading device. I cannot say that petitioner’s appeal is of that type or that it is wholly without merit, although I denied his request for a certificate of appealability in the March 25, 2015 order.

ORDER

IT IS ORDERED that petitioner Danny Turner’s request for leave to proceed in forma pauperis on appeal is GRANTED. His request for a certificate of appealability was denied in the March 25, 2015 order.

Entered this 9th day of July, 2015.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge