

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

MARCUS JOHNSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER

15-cv-481-bbc

12-cr-83-bbc

Petitioner Marcus Johnson has filed an appeal of the September 11, 2015 order denying his motion for post conviction relief under 28 U.S.C. § 2255 as well as a letter dated October 21, 2015 in which he asks for permission to file a late appeal. In his letter, he states that he was unable to mail his appeal papers in a timely manner because his institution was on lock down from August 21, 2015 to October 1, 2015 and he did not have access to law library. A letter that he provides from the the institution confirms this fact.

Under Fed. R. App. P. 4(a)(5), a district court may extend the time to file a notice of appeal if the party seeking to appeal files a request for an extension within 30 days after the time for filing the appeal has expired. I will construe defendant's cover letter as a request for an extension of time in which to file his notice of appeal and will grant the request.

Defendant'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 an appeal is not taken in "good faith" if it is based on a "frivolous claim" that is, "a claim that no reasonable person could suppose to have any merit." Id. at 1026. Defendant's claim is not "fantastical," as were the claims in Lee, in which the allegation was that the United States and China were engaged in a 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.

ORDER

IT IS ORDERED that petitioner Marcus Johnson's October 21, 2015 letter to the court, dkt. #4-1, is construed as a request for an extension of time and is GRANTED. His request to proceed on appeal in forma pauperis is GRANTED.

Entered this 30th day of October, 2015.

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