

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

|                           |   |                                    |
|---------------------------|---|------------------------------------|
| RAYSHAWN A. HOLLOWAY,     | ) |                                    |
|                           | ) |                                    |
| Petitioner                | ) |                                    |
|                           | ) |                                    |
| vs.                       | ) | CAUSE NO. 3:10-CV-421 RM           |
|                           | ) | (Arising out of 3:08-CR-66(01) RM) |
| UNITED STATES OF AMERICA, | ) |                                    |
|                           | ) |                                    |
| Respondent                | ) |                                    |

OPINION and ORDER

On October 19, 2010, the court denied Mr. Holloway’s petition filed pursuant to 28 U.S.C. § 2255 based on Mr. Holloway’s waiver, in his plea agreement, of his right to appeal and to file a habeas petition; the court further denied his motion for reconsideration of that order on November 16. Mr. Holloway has filed an appeal of those orders and is before the court asking that a certificate of appealability be issued, and although Mr. Holloway hasn’t asked that he be permitted to proceed *in forma pauperis* on appeal, the court will construe his motion for a certificate of appealability as including that request, as well.

Issuance of a certificate of appealability requires the court to find that Mr. Holloway has made “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). He has not. In his plea agreement, Mr. Holloway waived his right to file an appeal and a petition under § 2255, and he has presented no facts or evidence to establish that his waiver was not knowing and voluntary or that he received ineffective assistance of counsel with respect to that waiver. Mason v.

United States, 211 F.3d1065, 1069 (7th Cir. 2000); Jones v. United States, 167 F.3d 1142, 1145 (7th Cir. 1999). His request for a certificate of appealability will be denied.

Federal Rule of Appellate Procedure 24(a)(3) provides that a financially indigent person may be permitted to proceed on appeal *in forma pauperis* unless the court “certifies that the appeal is not taken in good faith.” In other words, the court must determine “that a reasonable person could suppose that the appeal has some merit.” Walker v. O’Brien, 216 F.3d 626, 632 (7th Cir. 2000). Because no reasonable person could find that Mr. Holloway’s appeal has any merit, the court concludes that his appeal is not taken in good faith, and his request for pauper status must be denied.

Based on the foregoing, the court DENIES Mr. Holloway’s motion for leave to proceed *in forma pauperis* on appeal and for a certificate of appealability [docket # 75 in Cause No. 3:08-CR-66(01)RM and docket # 7 in Cause No. 3:10-CV-421RM].

SO ORDERED.

ENTERED: January 24, 2011

/s/ Robert L. Miller, Jr.  
Judge, United States District Court

cc: R. Holloway  
D. Schmid-AUSA