

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

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|---------------------------|---|-----------------------------------|
| LARRY ALDRIDGE, |) | |
| |) | |
| Petitioner |) | |
| |) | |
| v. |) | Cause No.: 3:11-CV-224 RM |
| |) | (arising out of 3:05-CR-69(01)RM) |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Respondent |) | |

OPINION AND ORDER

The court recently denied Larry Aldridge’s petition for habeas relief under 28 U.S.C. § 2255. See Opinion and Order, June 16, 2011 [Doc. No. 52]. Mr. Aldridge has now timely filed a notice of appeal, which the court construes as a motion for a certificate of appealability and a motion to proceed on appeal *in forma pauperis*.

To obtain a certificate of appealability Mr. Aldridge must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). This means he must show “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” Miller-El v. Cockrell, 537 U.S. at 336. For the reasons stated in the June 16, 2011 opinion and order, Mr. Aldridge is far from meeting this burden: upon pleading guilty he waived his right to pursue post-conviction relief and the judgment against him became final more than five years ago. The issue Mr. Aldridge raises—the

constitutionality of mandatory minimum sentences for “first time, non-violent offender[s]”—shouldn’t be encouraged to proceed further. Mr. Aldridge’s motion for a certificate of appealability is DENIED.

An appeal can’t be taken *in forma pauperis* if it is not taken in good faith. 28 U.S.C. § 1915(a)(3). The appointment of CJA counsel during previous proceedings doesn’t automatically entitle Mr. Aldridge to proceed *in forma pauperis* on appeal. See FED. R. APP. PROC. 24(a)(3)(A). On the other hand, the denial of a certificate of appealability doesn’t automatically require the denial of a motion to proceed *in forma pauperis*. Walker v. O’Brien, 216 F.3d 626, 631-32 (7th Cir. 2000). Rather, the court must decide whether “a reasonable person could suppose that the appeal has some merit.” Id. at 632. For the reasons stated in the June 16, 2011 opinion and order, an appeal wouldn’t be taken in good faith, and the motion to proceed *in forma pauperis* is DENIED.

SO ORDERED.

ENTERED: July 26, 2011

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

cc: Clerk, Seventh Circuit Court of Appeals
L. Aldridge
J. Maciejczyk-AUSA