

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

ANTONIO CANTU,)	
)	
Petitioner)	
)	
vs.)	CAUSE NO. 3:12-CV-181 RM
)	(Arising out of 3:11-CR-40 RM)
UNITED STATES OF AMERICA,)	
)	
Respondent)	

OPINION and ORDER

In June 2011, Antonio Cantu pleaded guilty to committing bank robbery by force or violence in violation of 18 U.S.C. § 2113(a). Mr. Cantu filed a petition pursuant to 28 U.S.C. § 2255 in April 2012, which the court denied based on Mr. Cantu’s waiver in his plea agreement of his right to appeal or file a § 2255 petition and because, had he not waived his right to file a § 2255 petition, his claims were without merit. Mr. Cantu filed a motion for reconsideration, which the court denied in November 2012. Mr. Cantu is now before the court having filed a notice of appeal and a request that a certificate of appealability be issued. Although Mr. Cantu hasn’t filed a motion to proceed *in forma pauperis* on his appeal, the court will view his motion as including that request, as well.

Issuance of a certificate of appealability requires the court to find that Mr. Cantu has made “a substantial showing of the denial of a constitutional right.” 28

U.S.C. § 2253(c)(2). He hasn't done so. Mr. Cantu didn't establish that his guilty plea or the waiver provision in the plea agreement were anything but informed and voluntary. 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 decide "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. Cantu'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. Cantu's motion for a certificate of appealability and for leave to proceed *in forma pauperis* on appeal [docket # 63].

SO ORDERED.

ENTERED: December 18, 2012

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

cc: A. Cantu
AUSA Schmid