

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

TIMOTHY SCOTT BAILEY SMITH,

Petitioner,

v.

STATE OF WISCONSIN,

Respondent.

ORDER

05-cv-653-bbc

Timothy Smith has filed a notice of appeal from this court's order entered November 17, 2009, in which I denied a set of motions filed by petitioner titled "Motion to Renew an Application for a Preliminary Injunction/Temporary Restraining Order," "Motion for Stay of State Proceedings" and "Motion for Findings of Fact" under Fed. R. Civ. P. 52(a)(5). These motions related to this court's dismissal of a petition for a writ of habeas corpus that petitioner filed in November 2005. I denied the motions on the ground that they amounted either to an untimely attempt to resurrect the petition or to an unauthorized successive attack on petitioner's conviction.

When a petitioner files a motion that is actually a mislabeled successive habeas petition, the petitioner needs a certificate of appealability under 28 U.S.C. § 2253(c) in order to appeal. Sveum v. Smith, 403 F.3d 447, 448 (7th Cir. 2005) (per curiam). However, an unauthorized successive collateral attack does not satisfy the criteria for a certificate of appealability. Id. Accordingly, petitioner's implied request for a certificate of appealability will be denied.

Petitioner asserts that he will be filing an affidavit in support of a request to proceed *in forma pauperis* on appeal. Petitioner need not take this step because I am certifying that his appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3). No reasonable person could suppose there is any merit to petitioner's appealing the denial of his untimely and unauthorized motions. Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000).

ORDER

IT IS ORDERED that petitioner Timothy Smith's implied request for leave to proceed in forma pauperis on appeal is DENIED because I am certifying that his appeal is not taken in good faith.

Further, IT IS ORDERED that petitioner's implied request for a certificate of appealability is DENIED. Under Fed. R. App. P. 22(b), if a district judge denies an application for a certificate of appealability, the petitioner may request a circuit judge to issue the certificate.

Entered this 24th day of November, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge