IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

                                                        ORDER

                Plaintiff,

                                                        09-cv-208-bbc

        v.

MAURICE LARON HAYES,

                Defendant.

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On June 26, 2009, I denied defendant Maurice Laron Hayes's motion for post conviction relief brought pursuant to 28 U.S.C. § 2255.  On July 6, 2009, defendant filed a request for a certificate of appealability, which I denied on July 13, 2009.  On July 28, 2009, defendant filed another request for certificate of appealability with the court of appeals. The court of appeals has forwarded the document to this court, with a request that it be construed as a notice of appeal of the June 26, 2009 denial of defendant's § 2255 motion.  Because defendant has not paid the $455 filing fee, it is necessary to decide whether he is entitled to proceed on appeal in forma pauperis.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis

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without further authorization "unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed." Defendant had court-appointed counsel during the criminal proceedings against him and I do not intend to certify that his appeal is not taken in good faith. Defendant's challenge to his sentence is not wholly frivolous. A reasonable person could suppose that it has some merit. Cf., Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000). Therefore, I will grant him leave to proceed on appeal in forma pauperis.

ORDER

IT IS ORDERED that defendant Maurice Laron Hayes's request for a certificate of appealability filed with the court of appeals is construed as notice of appeal and motion to proceed in forma pauperis on appeal. Defendant's motion to proceed in forma pauperis on appeal is GRANTED.

Entered this 18th day of September, 2009.

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

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