

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

FELIX WALLS,

Petitioner,

v.

WARDEN CAROL HOLINKA of FCI Oxford
and other ARTICLE II SWORN OFFICIALS[s]
of the DEPARTMENT OF JUSTICE, known and
unknown,

Respondents.

ORDER

09-cv-430-slc

This petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 was dismissed on September 22, 2009 for lack of jurisdiction. I found that petitioner had not identified any legally recognized structural flaw in 28 U.S.C. § 2255 that would allow him to proceed under 28 U.S.C. § 2241 and that the suspension clause offered no independent cause of action for pursuing writs of habeas corpus. Now petitioner has filed a notice of appeal. Because he has not paid the \$455 fee for filing a notice of appeal, I construe the notice as including a request for leave to proceed in forma pauperis on appeal. The request will be denied because I must certify that petitioner's appeal is not taken in good faith. 28

U.S.C. § 1915(a)(3).

Petitioner does not assert any grounds for his appeal and he has no meritorious argument to show that this court has jurisdiction of his petition. Therefore, I am certifying that his appeal is not taken in good faith and denying his request for leave to proceed in forma pauperis on appeal.

Because I am certifying petitioner's appeal as not having been taken in good faith, petitioner cannot proceed with his appeal without prepaying the \$455 filing fee unless the court of appeals gives him permission to do so. Pursuant to Fed. R. App. P. 24, petitioner has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), including a statement of issues that petitioner intends to present on appeal. Also, petitioner's motion must be accompanied by a copy of this order. Petitioner should be aware that these documents should be filed in addition to the notice of appeal he has previously filed. If petitioner does not file a motion requesting review of this order, the court of appeals may not address this court's denial of leave to proceed in forma pauperis on appeal. Instead, it will require petitioner to pay the entire \$455 filing fee before it considers his appeal. If petitioner fails to pay the fee within the deadline set, it is possible that the court of appeals will dismiss the appeal.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on appeal, dkt. #21, is DENIED. I certify that petitioner's appeal is not taken in good faith. The clerk of court is directed to insure that petitioner's obligation to pay the \$455 fee for filing his appeal is reflected in the court's financial record.

Entered this 22nd day of October, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge