

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MORRIS BROWN,

Defendant.

ORDER

10-cv-47-bbc

08-cr-134-bbc

Defendant Morris Brown has filed a notice of appeal and a motion for extension of time for filing a notice of appeal from both the February 18, 2010 judgment entered in this case denying his § 2255 motion and the March 31, 2010 order denying his Rule 59 motion. A district court may extend the time for filing a notice of appeal upon motion filed no later than 30 days after the expiration of the time prescribed by Fed. R. App. P. 4 and upon the movant's showing of excusable neglect or good cause. Defendant filed his motion on June 2, 2010, which is within the 30-day period following expiration of the 60-day period he had in which to file a notice of appeal. He explains that his failure to file a timely notice of appeal was the result of the fact that since April 16, 2010, the institution in which he is

incarcerated has been on lock down status. Although this excuse is not a strong one, I conclude that it is sufficient to allow the court to find good cause for defendant's missing the 60-day deadline for filing his notice of appeal. Therefore, I will grant defendant's request for an extension of time until June 4, 2010.

Defendant's notice of appeal was not accompanied by the \$455 fee for filing an appeal. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I construe it as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915. 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 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 appointed counsel during the criminal proceedings against him and I do not intend to certify that the 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. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

However, in order for defendant to be able to take an appeal, he needs a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. That request was denied on March 4, 2010. Dkt. #6. Under Fed. R. App. P. 22(b), if a district judge denies an application for a certificate of appealability, the defendant may request a circuit judge to

issue the certificate.

ORDER

IT IS ORDERED that defendant Morris Brown's request for leave to file an untimely notice of appeal and his request for leave to proceed in forma pauperis on appeal are GRANTED.

Entered this 8th day of June, 2010.

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