

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

NORRIS E. PEGUES,

Petitioner,

v.

TIMOTHY DOUMA, Warden

Respondent.

ORDER

11-cv-194-wmc
App. No. 17-01743

On September 10, 2015, almost three years after judgment was entered, Pegues filed a motion for reconsideration of the court's September 24, 2012, order dismissing his petition for a writ of habeas corpus and denying him a certificate of appealability. (Dkt. #18.) His motion was denied on March 7, 2017. Pegues has now filed a notice of appeal and he requests leave to proceed without prepayment of the appellate docketing fee. (Dkt. #29.) Pegues also requests a certificate of appealability. (Dkt. #30.)

In determining whether a litigant is eligible to proceed *in forma pauperis* on appeal, the court must find that he is indigent and, in addition, that the appeal is taken in good faith for purposes of Fed. R. App. P. 24(a)(3). *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken *in forma pauperis* if the court certifies in writing that it is not taken in good faith."). In view of Pegues's untimely filings, the court cannot certify that his appeal is taken in good faith. Accordingly, his request for leave to proceed *in forma pauperis* on appeal must be denied.

The same is true as to his request for a certificate of appealability. A certificate of appealability shall issue "only if the applicant has made a substantial showing of the

denial of a constitutional right." *Walker v. O'Brien*, 216 F.3d 626, 631-32 (7th Cir. 2000); *see also* 28 U.S.C. § 2253(c)(2). Because nothing in petitioner's motion convinces me that I erred by not issuing a certificate of appealability, no certificate will issue, and the motion will be denied. Under Fed. R. App. 22(b), petitioner may request a circuit judge to issue the certificate.

ORDER

IT IS ORDERED that:

1. Petitioner Norris E. Pegues's motion for a certificate of appealability (dkt. #30) is DENIED. If Pegues wishes, he may seek a certificate from the court of appeals under Fed. R. App. P. 22.
2. The court CERTIFIES that the appeal is not taken in good faith for purposes of Fed. R. App. P. 24(a)(3) and DENIES Pegues's motion for leave to proceed *in forma pauperis* on appeal (dkt. #29).
3. Although this court has certified that the appeal is not taken in good faith under Fed. R. App. P. 24(a)(3), **Pegues is advised that he may challenge this finding pursuant to Fed. R. App. P. 24(a)(5), by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, United States Court of Appeals for the Seventh Circuit, within thirty (30) days of the date of this order.** With that motion, he must include an

affidavit as described in the first paragraph of Fed. R. App. P. 24(a), along with a statement of issues he intends to argue on appeal. Also, he must send along a copy of this order. Pegues should be aware that he must file these documents in addition to the notice of appeal he has filed previously.

Entered this 20th day of April, 2017.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge