

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

CHERYL A. McNAMEE,

Defendant.

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ORDER

11-cr-142-bbc  
13-cv-10-bbc

Defendant Cheryl McNamee has filed a notice of appeal from the February 28, 2013 order denying her post conviction motion under 28 U.S.C. § 2255 and a request for a certificate of appealability. Although it appears that the appeal is untimely, it is not within this court's authority to determine the timeliness of an appeal; that decision is for the court of appeals to make.

Her 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." Because defendant had retained counsel during the criminal proceedings against her, she is not automatically eligible for in forma pauperis status.

Defendant will have to show that she is entitled to pauper status on appeal. Therefore, I will give defendant until July 1, 2013 to complete and file the enclosed affidavit so that I may determine her financial eligibility to proceed on appeal without prepaying the fee for filing her notice of appeal.

#### ORDER

IT IS ORDERED that defendant shall have until July 1, 2013, in which to file an affidavit of indigency with the court so it can determine whether defendant is eligible to proceed on appeal in forma pauperis.

Entered this 23d day of May, 2013.

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