

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

RICKY PETTY,

Defendant.

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ORDER

10-cr-188-bbc

13-cv-734-bbc

On October 23, 2013, I denied defendant Ricky Petty's motion for post conviction relief under 28 U.S.C. § 2255 for his failure to show that he was sentenced in violation of the law. In the same order, I denied the issuance of certificate of appealability under 28 U.S.C. § 2253(c) and Rule 11 of the Rules Governing Section 2255 Cases in the United States District Courts. Judgment denying defendant's motion was entered on November 15, 2013. Also on November 15, 2013, defendant filed a motion for reconsideration which was also denied on November 15, 2013.

Now defendant has filed a notice of appeal. He has not paid the \$505 fee that is required if he is to take an appeal from the denial of a § 2255 motion. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I will construe defendant's notice as including

a request for leave to proceed in forma pauperis on appeal under 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.” I do not need to decide whether defendant is indigent because I am certifying that the appeal is not taken in good faith. In this case a reasonable person could not suppose that the appeal has some merit, as is required in order for the appeal to be taken in good faith.

The law is clear on the subject of federal jurisdiction over local crimes. It is not debatable that the Court of Appeals for the Seventh Circuit has ruled that “it was within the authority of the Congress under the Commerce Clause to create drug laws criminalizing narcotics transactions such as those found under 21 U.S.C. §§ 846 and 841.” United States v. Westbrook, 125 F.3d 996, 1009 (7th Cir.1997). The creation of those laws was a valid exercise of congressional authority under the commerce clause because local narcotics activities have a substantial effect on interstate commerce. Id. Therefore, I will deny defendant’s request to proceed in forma pauperis on appeal.

#### ORDER

IT IS ORDERED that defendant Ricky Petty’s request to proceed in forma pauperis

on appeal is DENIED.

Entered this 9th day of December, 2013.

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