

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

ERNEST BROOKS,

Petitioner,

ORDER

18-cv-7-bbc
02-cr-27-bbc

v.

UNITED STATES OF AMERICA,

Respondent.

On January 2, 2018, petitioner Ernest Brooks filed a motion for post conviction relief under 28 U.S.C. § 2255, contending that he is innocent of the crime for which he was convicted in 2002. This was not his first attempt to overturn his 2005 conviction; he has filed a number of motions attacking his conviction and sentence, as the following summary shows:

1. Motion for post conviction relief filed on August 1, 2005, dkt. #219, challenging the 2002 sentence and conviction, which was denied in August 2005, dkt. #221.

2. Motion for reconsideration on filed on August 18, 2005, dkt. #223; denied on August 22, 2005, dkt. #226.

3. Motion for modification of his sentence, August 7, 2008, dkt. #246; denied on February 17, 2009, dkt. #249.

4. Appeal from denial of motion for modification, March 2, 2009, dkt. #250; motion affirmed by the Court of Appeals for the Seventh Circuit on June 15, 2009, dkt. #252.

5. Motion for modification of sentence after change in sentencing guidelines, October 16, 2009, dkt. #253; construed as motion to reconsideration and denied October 22, 2009, dkt. # 254.

6. Motion for reduction of sentence under 18 U.S.C. § 3582, October 16, 2012, dkt. #254 ; denied on November 28, 2012, dkt. #257.

7. Motion for reconsideration of denial of dkt. #254, filed December 13, 2012, dkt. #259 ; denied on January 10, 2013, dkt. #263.

8. Appeal from denial of motion for reconsideration, filed January 28, 2013, dkt. #264; denied on May 28, 2013, dkt. #272.

9. Motion to modify or reduce term of imprisonment filed June 5, 2015, dkt. #275, denied June 25, 2015, dkt. #277.

10. Notice of appeal filed July 17, 2015, dkt. #278; dismissed on November 6, 2015, dkt. #284.

11. Motion to vacate under 28 U.S.C. § 2255, January 2, 2018; dismissed on January 31, 2018, dkt. #290.

Now defendant has filed a notice of appeal from the January 31 and March 7, 2018 orders. 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 must certify that petitioner's appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3).

When I screened the January 2, 2018 petition, I denied it because it was a successive petition. Having reviewed the order, I am convinced that reasonable jurists would not debate the conclusions I reached.

Because I am certifying petitioner's appeal as not having been taken in good faith, he cannot proceed with his appeal without prepaying the filing fee unless the court of appeals gives him permission to do so. Under 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 his request for leave to proceed in forma pauperis on appeal. With his motion, he must include an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), with a statement of issues he intends to argue on appeal. Also, he must send along a copy of this order.

Petitioner should be aware that he must file these documents in addition to the notice of appeal he has filed previously. If petitioner does not file a motion requesting review of this order, the court of appeals might not address the denial of leave to proceed. Instead, it may require petition to pay the entire filing fee before it considers his appeal. If petitioner fails to pay the fee within the deadline, it is possible that the court of appeals will dismiss the appeal.

ORDER

IT IS ORDERED that petitioner Ernest Brooks's request leave to proceed in forma pauperis on appeal is DENIED because I certify that his appeal is not taken in good faith. If petitioner wishes to appeal this decision, he must follow the procedure set out in Fed. R. App. P. 24(a)(5). The clerk of court is requested to insure that petitioner's obligation to pay the \$505 filing fee for the appeal is reflected in this court's financial records.

Entered this 29th day of March, 2018.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge