

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
)
 v.)
)
DANIEL LLOYD,)
)
)
 Defendant.)
_____)

8:04CR353

ORDER

This matter is before the Court on defendant's letter (Filing No. 71), which the Court will construe as a notice of appeal. Defendant seeks to appeal *in forma pauperis* from the memorandum opinion (Filing No. 69) and order (Filing No. 70) of this Court entered on January 30, 2006. In that memorandum opinion and order, the Court denied defendant's motion filed pursuant to 28 U.S.C. § 2255.

Defendant's conviction and sentence became final on October 14, 2005, and his § 2255 motion was filed on December 7, 2005. Defendant has now filed a letter dated March 28, 2006, which the Court has construed as a notice of appeal.

Title 28, United States Code, § 2253(c), provides that an appeal may not be taken from a final order in a proceeding under § 2255 unless this Court or a circuit justice issues a certificate of appealability. Section 2253(c)(2) provides that a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional

right. In reviewing petitioner's § 2255 motion and this Court's memorandum opinion of January 30, 2006, the Court finds that petitioner has not made a substantial showing of the denial of a constitutional right. For this reason, the Court will not issue a certificate of appealability.

Defendant is entitled to proceed *in forma pauperis*. However, a certificate of appealability will not be issued in connection with his motion under 28 U.S.C. § 2255. Accordingly,

IT IS ORDERED:

1) A certificate of appealability will not issue as to the denial of defendant's motion filed pursuant to 28 U.S.C. § 2255.

2) Defendant's application to proceed on appeal *in forma pauperis* is granted.

DATED this 10th day of May, 2006.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court