

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

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|----------------------------------|---|----------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | CRIMINAL ACTION |
| v. |) | |
| |) | No. 04-20089-01-KHV |
| MONTGOMERY CARL AKERS, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

MEMORANDUM AND ORDER

This matter is before the Court on Defendant/Appellant's Motion For Leave To Proceed In Forma Pauperis On Appeal (Doc. #383) and Defendant's Motion To Disqualify Judge Kathryn H. Vratil From Considering The Defendant's Motion For Leave To Proceed In Forma Pauperis On Appeal (Doc. #382), both filed January 24, 2011. For reasons stated below, the Court overrules defendant's motions.

I. Renewed Motion To Disqualify (Doc. #382)

Defendant asks the undersigned judge to recuse herself from considering his motion for leave to proceed *in forma pauperis* on appeal. Once again, defendant asserts a conspiracy between the undersigned judge and counsel in this case. As explained in a prior order, defendant's assertions are untrue, irrational and insufficient to warrant recusal. See United States v. Akers, 2009 WL 3645068, at *1 (D. Kan. Oct. 30, 2009).

II. Motion To Proceed In Forma Pauperis (Doc. #383)

Under Rule 24(a)(1)(C), Fed. R. App. P., defendant's motion must state the issues which he intends to present on appeal. Rule 24(a) requires such a statement because the district court will deny *in forma pauperis* status if it determines that the appeal is not taken in good faith. See Fed. R.

App. P. 24(a)(4)(B). Good faith is an objective standard measured by whether the appeal is “frivolous” or lacks a “rational argument on the law or facts.” See Coppedge v. United States, 369 U.S. 438, 448 (1962). For substantially the reasons stated in the Memorandum And Order (Doc. #375) filed November 18, 2010, defendant has not shown that his appeal is made in good faith. Accordingly, defendant’s motion to proceed *in forma pauperis* is overruled.

IT IS THEREFORE ORDERED that Defendant’s Motion To Disqualify Judge Kathryn H. Vratil From Considering The Defendant’s Motion For Leave To Proceed In Forma Pauperis On Appeal (Doc. #382) filed January 24, 2011 be and hereby is **OVERRULED**.

IT IS FURTHER ORDERED that Defendant/Appellant’s Motion For Leave To Proceed In Forma Pauperis On Appeal (Doc. #383) filed January 24, 2011 be and hereby is **OVERRULED**.

The Clerk is directed to forward a copy of this order to the Clerk of the Tenth Circuit.

Dated this 7th day of February, 2011 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge