

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CRIMINAL ACTION
)	
v.)	No. 06-20162-01-KHV
)	
KEVIN TOMMIE HALL,)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

On June 10, 2009, the Court sentenced defendant to 594 months in prison. On December 14, 2018, the Court overruled defendant’s Rule 60(b) motion and dismissed his second or successive motion under 28 U.S.C. § 2255. See Memorandum And Order (Doc. #247). This matter is before the Court on defendant’s Motion To Proceed In Forma Pauperis (Doc. #251) filed February 20, 2019. For reasons stated below, the Court overrules defendant’s motion.

Because the Court previously appointed counsel for defendant under 18 U.S.C. § 3006A and it does not appear that his financial circumstances have changed, the Court finds that pursuant to Rule 24(a), Fed. R. App. P., defendant financially qualifies for in forma pauperis status. Under Rule 24(a)(1)(C), defendant’s motion must also 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)(3)(A). 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).

The Court finds that defendant’s appeal is not made in good faith. Defendant continues

to assert that (1) under Rosemond v. United States, 572 U.S. 65 (2014), the aiding and abetting instruction and general verdict form were erroneous and (2) the Court erred at sentencing in classifying him as a career offender under 18 U.S.C. § 924(e)(1) and Section 4B1.1 of the Sentencing Guidelines. See Notice Of Appeal (Doc. #248) at 1-4; Rule 60(b) Motion Revisited [And] Rule 60(b)(6) New Motion (Doc. #245) filed June 18, 2018, at 2-7. While defendant may have a good faith belief in the substantive merit of such claims, he has not shown any non-frivolous basis to raise the claims at this stage. For substantially the reasons stated in the Court's Memorandum And Order (Doc. #247), an appeal of the denial of his Rule 60(b) motion and dismissal of his successive petition under Section 2255 would be frivolous. Defendant's motion to proceed in forma pauperis on appeal is overruled.

IT IS THEREFORE ORDERED that defendant's Motion To Proceed In Forma Pauperis (Doc. #251) filed February 20, 2019 is **OVERRULED**. The Clerk is directed to send a copy of this order to the Tenth Circuit Court of Appeals.

Dated this 26th day of February, 2019 at Kansas City, Kansas.

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