IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

UNITED STATES OF AMERICA,	CASE NO. 3:04-cr-00012
v.	MEMORANDUM OPINION
TONY J. BACON, *Defendant.*	JUDGE NORMAN K. MOON

This matter comes before the Court on a motion for leave to appeal in forma pauperis filed by Tony Bacon ("Defendant"). Rule 24(a) of the Federal Rules of Appellate Procedure states in pertinent part:

> (1) Motion in the District Court. Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:
>
> (A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;
> (B) claims an entitlement to redress; and
> *(C) states the issues that the party intends to present on appeal*.

Fed. R. App. P. 24(a) (emphasis added).[1] With respect to the command found in Rule 24(a)(1)(C), Defendant has failed to list in his application a discernable issue to be heard on appeal; rather, he describes the hardship that being on supervised release has caused him with respect to his employment. In other words, Defendant has not indicated on what, if any, ground he objects to the order I issued denying his motion for early termination of supervised release

[1] I note that Defendant has not previously been granted leave to proceed in forma pauperis in this case.

(docket no. 34).[2] As such, Defendant has arguably failed to comply with Rule 24(a)(1), and his motion could be denied on that basis.

Additionally, after reviewing Defendant's application, I conclude that his appeal is not taken in good faith. "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3); *see also* Fed. R. App. P. 24(a)(4)(B). "In the absence of some evident improper motive, the applicant's good faith is established by the presentation of any issue that is not plainly frivolous." *Ellis v. United States*, 356 U.S. 674, 674 (1958). Determining what constitutes good faith "need not involve a subjective inquiry into the appellant's intent." *Brown v. Booker*, 622 F. Supp. 993, 994 (E.D. Va. 1985). In *Liles v. South Carolina Department of Corrections*, 414 F.2d 612, 614 n.1 (4th Cir. 1969), the United States Court of Appeals for the Fourth Circuit instructed that a lack of good faith is not shown by the mere fact "that the appeal lacks merit, but that the issues raised are so frivolous that the appeal would be dismissed in the case of a non-indigent litigant." I find that this standard has been met in the case at hand. If a non-indigent offender were to appeal a district court's wholly discretionary decision to deny an opposed motion for early termination of supervised release, and further, were to ascribe no instance of error or abuse of discretion to the district court, that appeal would almost certainly be dismissed. While I appreciate that being on supervised release represents an impediment to Defendant in his efforts to obtain certain types of employment, that fact, in itself, cannot be a basis of appeal. Therefore, I find that Defendant's appeal is frivolous and not taken in good faith.

[2] A district court has discretionary authority to "terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release . . . if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice." 18 U.S.C. § 3583(e)(1).

For the reasons stated herein, Defendant's motion to appeal in forma pauperis (docket no. 37) shall be denied. Defendant is advised that any further motion to proceed on appeal in forma pauperis should be filed with the United States Court of Appeals for the Fourth Circuit in accordance with Rule 24(a)(5) of the Federal Rules of Appellate Procedure.

The Clerk of the Court is hereby directed to send a certified copy of this Memorandum Opinion and the accompanying Order to Defendant and all counsel of record.

Entered this 20th day of December, 2011.

/s/ Norman K. Moon
NORMAN K. MOON
UNITED STATES DISTRICT JUDGE