IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
VS.)	CR. NO. 2:07cr095-WHA-001
)	
TERRANCE DEANDRE CAFFEY)	

ORDER

This cause is now before the court on Defendant's Notice of Appeal and/or Appointment of Counsel on Appeal (Doc. #115), which the court construes to include a motion to proceed on appeal *in forma pauperis*.

28 U.S.C. § 1915(a) provides that "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." In making this determination as to good faith, a court must use an objective standard, such as whether the appeal is "frivolous," *Coppedge v. United States*, 369 U.S. 438, 445, 82 S.Ct. 917, 921 (1962), or "has no substantive merit." *United States v. Bottoson*, 644 F.2d 1174, 1176 (5th Cir. Unit B May 15, 1981) (per curiam) *cert. denied*, 454 U.S. 903, 102 S.Ct. 411 (1981); *see also Rudolph v. Allen*, 666 F.2d 519, 520 (11th Cir. 1982) (per curiam), *cert. denied*, 457 U.S. 1122, 102 S.Ct. 2938 (1982); *Morris v. Ross*, 663 F.2d 1032 (11th Cir. 1981), *cert. denied*, 456 U.S. 1010, 102 S.Ct. 2303 (1982). Applying this standard, for the reasons set out in the court's Order (Doc. #113) denying the Defendant's Motion to Correct Sentence, this court is of the opinion that the Defendant's appeal is without a legal or factual basis and, accordingly, is frivolous and not taken in good faith. *See, e.g., Rudolph v. Allen, supra; Brown v. Pena*, 441 F.Supp. 1382 (S.D. Fla. 1977), *aff'd without opinion*, 589 F.2d 1113 (5th Cir. 1979).

Accordingly, it is ORDERED as follows:

- 1. The Defendant's motion for appointment of counsel is DENIED.
- 2. The Defendant's motion to proceed on appeal *in forma pauperis* is hereby DENIED, and the appeal in this cause is hereby certified, pursuant to 28 U.S.C. § 1915(a), as not taken in good faith.

DONE this 20th day of May, 2008.

/s/ W. Harold Albritton

W. HAROLD ALBRITTON SENIOR UNITED STATES DISTRICT JUDGE