

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DENNIS E. JONES 'EL, MICHA'EL
JOHNSON, DE'ONDRE CONQUEST,
LUIS NIEVES, SCOTT SEAL, ALEX
FIGUEROA, ROBERT SALLIE, CHAD
GOETSCH, EDWARD PISCITELLO,
QUINTIN L'MINGGIO, LORENZO
BALLI, DONALD BROWN, CHRISTOPHER
SCARVER, BENJAMIN BIESE, LASHAWN
LOGAN, JASON PAGLIARINI, and
ANDREW COLLETTE, and
all others similarly situated,

Plaintiffs,

v.

GERALD BERGE and
JON LITSCHER,

Defendants.

MEMORANDUM

00-C-421-C

On June 12, 2002, plaintiff De'Ondre Jayvon Conquest filed a notice of appeal from the settlement agreement reached in this case on March 8, 2002. In an order dated June 14, 2002, I told plaintiff that I did not intend to certify that his appeal was not taken in good faith and I concluded that he was not barred from proceeding in forma pauperis on appeal

because of an accumulation of too many strikes under the three-strikes provision of 28 U.S.C. § 1915. However, I advised plaintiff that before I could decide whether he qualified financially for indigent status under 28 U.S.C. § 1915, he would have to submit no later than July 5, 2002, a trust fund account statement for the period beginning January 14, 2002 and ending June 14, 2002. Plaintiff did not submit the required trust fund account statement.

On August 6, 2002, this court entered another order, clearing up a mix-up in the record involving Conquest and another plaintiff who had filed a pro se appeal. In the August 6 order, I noted that plaintiff still had not submitted a trust fund account statement as required by the June 14 order, and extended the time for submitting the statement to August 23, 2002. Plaintiff did not supply the required trust fund account statement. On October 11, 2002, I entered an order denying plaintiff's request for leave to proceed in forma pauperis on appeal for his failure to show that he was entitled to pauper status. On December 31, 2002, the Court of Appeals for the Seventh Circuit dismissed plaintiff's appeal for his failure to pay the required docketing fee.

Now plaintiff has submitted a letter dated January 2, 2003, together with a copy of an inmate complaint examiner report dated December 18, 2002. In these documents, plaintiff argues that he did arrange for a trust fund account statement to be sent to the court in August 2002, and that someone at the prison must have tampered with his mail. The

inmate complaint examiner's report shows that plaintiff began looking into the matter on November 11, 2002, and was told on December 18, 2002 by the examiner that an investigation had revealed that a six month trust fund account statement was prepared by the prison financial office on August 14, 2002, but that it was not possible to tell from the record where the statement had been mailed. Plaintiff asks that the court "look into this" and tell plaintiff what his next step is in connection with his appeal.

When plaintiff received this court's order of October 11, 2002, denying him leave to appeal in forma pauperis for his failure to show he was indigent through a certified trust fund account statement, he should have notified this court promptly of his efforts to send a trust fund account statement, begun preparations to have a duplicate statement sent to this court, and started his investigation into what happened to the original statement. Alternatively, he could have filed a request for leave to proceed in forma pauperis directly in the Court of Appeals for the Seventh Circuit as permitted under Fed. R. App. P. 24, together with the required copy of his trust fund account statement and a showing that he had made diligent efforts to comply earlier with this court's orders for a copy of his trust fund account statement. Instead, he failed to arrange for a second copy of the statement to be sent to this court or to the court of appeals and he waited one full month after the October 11 order, until November 11, 2002, before he filed an inmate complaint to check into the disappearance of the first statement.

There is nothing more for this court to do. The court of appeals has dismissed plaintiff's appeal. If plaintiff believes that the dismissal was in error, he will have to ask the court of appeals to reconsider the dismissal or appeal the decision to the United States Supreme Court.

Entered this 29th day of January, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge