

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.

ORDER

00-C-421-C

On December 26, 2002, the Court of Appeals for the Seventh Circuit remanded Evelio Duarte-Vestar's appeal to this court for a ruling on Duarte-Vestar's motion for leave to proceed on appeal in forma pauperis. A district court has authority to deny a prisoner's request for leave to proceed in forma pauperis under 28 U.S.C. § 1915 for the following

reasons: 1) the prisoner has not established indigence, 2) the appeal is in bad faith, or 3) the prisoner has three strikes. § 1915(a)(2), (a)(3), (g); Sperow v. Melvin, 153 F.3d 780 (7th Cir 1998).

When Duarte-Vestar filed his notice of appeal, he did not articulate specific grounds for filing an appeal. It was particularly important that he do so, because as an unnamed class member in this case he may appeal from the settlement agreement only if he objected to the proposed settlement before it was accepted by the court and if his appeal is grounded on alleged errors I made in failing to consider his objections. See Devlin v. Scardelletti, 536 U.S. 1 (2002). In an order entered on January 6, 2003, I advised Duarte-Vestar that before I could decide whether his appeal is taken in good faith, he would have to submit a copy of the objections to the settlement proposal that he sent to the court during the objection period in this case and a statement of the issues he wishes to raise on appeal, as required by Fed. R. App. P. 24(a)(1). Also, I explained to Duarte-Vestar that in order to decide whether he is financially eligible for pauper status, it would be necessary for him to send this court a certified trust fund account statement for the period beginning approximately July 1, 2002, and ending approximately January 1, 2003. Finally, I told Duarte-Vestar that if, by January 17, 2003, he failed to submit the required documents, I would deny his request for leave to proceed in forma pauperis on appeal for his failure to show that he qualifies for indigent status under 28 U.S.C. § 1915.

Instead of complying with this court's January 6 order, Duarte-Vestar filed a document titled "Motion Objection to Monitor Report of January 08, 2003." In addition, he filed in the Court of Appeals for the Seventh Circuit documents titled "On Motion to Review Order Rule 56 F.R. App. P. 7th Cir." and "Jurisdictional Statement." The court of appeals has provided this court with a copy of the latter filings in the event they were intended as a response to the January 6 order. I conclude they were not. None of Duarte-Vestar's submissions is responsive to the January 6 order. None provides insight into the nature of the objections Duarte-Vestar may have made to the proposed settlement agreement before it was ratified on March 8, 2002, or the basis for Duarte-Vestar's appeal. The documents contain vague statements such as that the settlement agreement "depriv[ed] the class action members of secured federal constitutional rights inclusive but not limited to due and effective protection of United States District Judge Barbara B. Crabb," and "Evelio Duarte-Vestar DOC prisoner 145355 is held at Supermax Correctional Institution and have liberty-economic interests protected by amendments I, V, VI, VIII, XIII, XIV, to the United States Constitution." [sic] Given Duarte-Vestar's failure to provide an intelligible explanation for his appeal and a copy of any objections he may have made earlier to the proposed settlement agreement, I conclude that his appeal is legally frivolous and that it must be certified as not taken in good faith. Moreover, I conclude from Duarte-Vestar's failure to submit a trust fund account statement that even if his appeal could be construed

so as to find good faith, Duarte-Vestar has failed to demonstrate that he qualifies financially for indigent status on appeal.

A prisoner whose appeal is certified as not having been taken in good faith or who otherwise does not qualify for indigent status under 28 U.S.C. § 1915 cannot take advantage of the initial partial payment provision in that statute. Instead, he owes the \$105 fee in full immediately, and if the money does not exist in his prison account, then prison officials are required to calculate monthly payments according to the formula set out in 28 U.S.C. § 1915(b)(2) and forward those payments to the court until the debt is satisfied. Therefore, if Duarte-Vestar has sufficient funds in his trust fund account to pay the full \$105, it must be remitted promptly to the clerk of court in one payment. If Duarte-Vestar fails to pay the fee for any reason other than because he does not have the money to do so, he will be understood as having given up his right to file future suits in forma pauperis. See Thurman v. Gramley, 97 F.3d 185, 188 (7th Cir. 1996).

ORDER

IT IS ORDERED that Evelio Duarte-Vestar's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that Duarte-Vestar's appeal is not taken in good faith.

If Duarte-Vestar intends to challenge this court's certification that his appeal is not

taken in good faith, he has 30 days from the date he receives this order in which to file with the court of appeals a motion for leave to proceed in forma pauperis on appeal. His motion must be accompanied by a copy of the affidavit prescribed in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

Entered this 6th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge