

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

MATTHEW J. FRANK, Secretary of the Wisconsin Department of Corrections, JON E. LITSCHER, former Secretary of the Wisconsin Department of Corrections; CINDY O'DONNELL, Deputy Secretary to Litscher; JOHN RAY, Corrections Complaint Examiner ("C.C.E."); GERALD BERGE, Warden at Supermax Correctional Institution; PETER HUIBREGTSE, Deputy Warden of Supermax; LIEUTENANT JULIE BIGGAR, a Lt. at Supermax; ELLEN RAY, I.C.E.; SGT. JANTZEN; C.O. WETTER; C.O. S. GRONDIN; C.O. MUELLER; C.O. CLARK, all guards at Supermax; JOHN SHARPE, Manager Foxtrot Unit at Supermax; SGT. BOYELSON,

Defendants.

ORDER

02-C-21-C

In an order dated December 21, 2004, I gave plaintiff until January 14, 2005, in which to submit a trust fund account statement for the period beginning approximately June 2, 2004 and ending approximately December 2, 2004, so that I may assess an initial

partial payment of the fee for filing his notice of appeal in this case. Now plaintiff has filed a document titled “Lindell’s Notice and Motion to be Granted In Forma Pauperis Status With Affidavit in Support.” In this motion, plaintiff states that “prison officials refuse to provide him with a certified copy of his trust account activity for the last 6 months. . . .”

Although the title of plaintiff’s motion suggests that he supported his motion with an affidavit, no affidavit accompanies the motion and the factual statements in the motion itself are not certified to be true under penalty of perjury. In 28 U.S.C. § 1915(b)(4), Congress provided that “[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.” Before I can find that plaintiff qualifies for passage on appeal under this provision, I must be able to conclude from evidence in the record that plaintiff has no means and no assets. Plaintiff does not explain in a sworn statement why prison officials are refusing to release the necessary six-month trust fund account statement. Moreover, plaintiff has not submitted original copies of his communications to and from prison authorities that might show why he has been unable to obtain a copy of his trust fund account statement. Until plaintiff submits evidence to show that he has made an effort to obtain the required trust fund account statement and that his efforts have been rebuffed, I am unwilling to find that plaintiff may proceed on appeal in forma pauperis under § 1915(b)(4).

I note that if plaintiff were to show that prison officials are refusing to print a copy of his trust fund account statement because he has exceeded the legal loan limit authorized under state statute and thus cannot pay for the copy, I would be compelled under the holding in Lindell v. McCallum, 352 F.3d 1107, 1111 (7th Cir. 2003), to conclude that Wisconsin is under no obligation to lend plaintiff the money he needs to purchase the statement. However, I would be inclined to infer from the fact that plaintiff has no means or assets to purchase a copy of his trust fund account statement that he qualifies to proceed in forma pauperis on appeal under § 1915(b)(4).

ORDER

IT IS ORDERED that plaintiff's motion to be granted in forma pauperis status without prepaying an initial partial payment of the fee for filing an appeal is DENIED without prejudice to plaintiff's renewing his motion with proof that he is being refused the necessary trust fund account statement because he has no funds with which to pay the cost of obtaining the statement.

Entered this 27th day of December, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge