

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

GARY B. CAMPBELL

Petitioner,

ORDER

v.

02-C-0255-C

SGT. DOLL; DOCTOR FERN SPRINGS, M.D.;
BRENDA BEAUDETTE, R.N.; JAN GOLLNICK, R.N.;
PATTY SCHERREIKS, R.N.,

Respondents.

On June 10, 2002, judgment was entered in this case denying petitioner's request for leave to proceed in forma pauperis on the ground that the federal claims raised in his complaint are legally frivolous. In addition, the court declined to exercise supplemental jurisdiction over petitioner's state law claims. Now petitioner has filed a notice of appeal.

Ordinarily, a prisoner who files a notice of appeal must send the court a trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal so that the court can calculate and assess an initial partial payment of the \$105 fee for filing the appeal. See 28 U.S.C. § 1915(a)(2). However, the partial payment provision of the in forma pauperis statute does not apply to a prisoner whose appeal is certified by the

district court as not taken in good faith. In this case, I must certify that petitioner's appeal is not taken in good faith because petitioner is attempting to raise on appeal the same legally frivolous claims he raised in his complaint in this court. Therefore, his request for leave to proceed in forma pauperis on appeal will be denied.

A prisoner whose appeal is certified as not having been taken in good faith owes the \$105 fee in full immediately. If the money does not exist presently in his prison account, 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. If the prisoner has sufficient funds in his regular account to pay the full \$105, it should be sent promptly to the clerk of court.

Petitioner may delay payment of the fee only if he files a challenge in the court of appeals to this court's determination that his appeal is not taken in good faith and he does so within 30 days of the date of this order. See Fed. R. App. P. 24(a)(5). However, he should know that if he does so and the court of appeals determines that this court was correct that the appeal is not taken in good faith, then the court of appeals may record a strike against petitioner and the payment will be due in full immediately. If petitioner fails to pay the fee for any reason other than his lack of ability to do so, he will be giving 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 petitioner Gary B. Campbell's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that his appeal is not taken in good faith.

Entered this 20th day of June, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge