

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

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HARRISON FRANKLIN,

Plaintiff,

v.

ORDER

02-C-618-C

GARY R. McCAUGHTRY, GERALD BERGE,  
PAULINE BELGADO, SARGENT SIEDOSCHLAG,  
PETER HUIBREGTSE, LINDA HODDY-TRIPP,  
JIM WEGNER, SARGENT LIND, CAPTAIN JOHN P  
GRAHL, SARGENT DAN MEEHAN, CO II MIKE  
GLAMAN, NURSE HOLLY MEIER, PAM BARTELS,  
TODD BAST and STEVEN SCHOELER

Defendants.

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In an opinion and order dated February 3, 2004, I granted defendants' motion for summary judgment and dismissed this case. The clerk of court entered judgment in favor of defendants on the same day. Plaintiff then filed a timely motion to alter or amend the judgment under Fed. R. Civ. P. 59, which was denied in an order dated February 17, 2004. Now plaintiff has filed a notice of appeal dated March 7, 2004, and an amended notice of appeal dated March 10, 2004. In the amended notice of appeal, plaintiff primarily makes

cosmetic changes to the March 7 notice of appeal. Therefore, I respectfully request that the court of appeals accept plaintiff's March 10 notice of appeal as plaintiff's only operative appeal.

Plaintiff requests leave to proceed in forma pauperis on appeal. Because he is a prisoner, he is subject to the 1996 Prison Litigation Reform Act. This means that I must determine whether plaintiff's appeal is barred because he has three strikes against him under 28 U.S.C. § 1915(g) or whether it must be certified as not having been taken in good faith. Plaintiff does not have three strikes against him, and I do not intend to certify that his appeal is not taken in good faith.

The 1996 Prison Litigation Reform Act requires also that plaintiff pay the \$255 fee for filing his notice of appeal, beginning with an initial partial payment of the filing fee that has been calculated from a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. 28 U.S.C. § 1915(a)(2). From the trust fund account statement plaintiff has submitted, I calculate his initial partial payment to be \$1.70.

Accordingly, IT IS ORDERED that plaintiff may have until April 8, 2004, in which to submit a check or money order made payable to the clerk of court in the amount of \$1.70. If, by April 8, 2004, plaintiff fails to pay the initial partial payment or explain his failure to do so, then I will advise the court of appeals of his noncompliance so that it may

take whatever action it deems appropriate with respect to this appeal and I will notify the warden at plaintiff's prison to begin collecting the fee in installments from plaintiff's prison account pursuant to 28 U.S.C. § 1915(b)(2).

Entered this 16th day of March, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge