

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

WILLIE WILLIAMS,

Plaintiff,

v.

WARDEN GERALD BERGE and
C.O. II H. BRAY,

Defendants.

ORDER

02-C-283-C

Judgment was entered in this action on January 29, 2003, granting defendants' motion for summary judgment and closing the case. On February 7, 2003, plaintiff filed a notice of appeal and a motion for leave to proceed in forma pauperis on appeal. In reviewing plaintiff's motion, it came to my attention that the judgment failed to show that several defendants had been dismissed from this case on June 20, 2002, when I denied plaintiff leave to proceed in forma pauperis on his Eighth and Fourteenth Amendment claims on the ground that the claims were legally frivolous. To correct the clerical error, I asked the clerk of court to enter an amended judgment and he did so on February 19, 2003. I construe plaintiff's notice of appeal as a notice of appeal from the amended judgment.

Plaintiff's motion for leave to proceed in forma pauperis on appeal is governed by the 1996 Prison Litigation Reform Act. Under the act, I must decide whether plaintiff's motion must be denied either because he has three strikes against him under 28 U.S.C. § 1915(g) or because the appeal is not 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 only other hurdle to plaintiff's proceeding with his appeal in forma pauperis is the requirement that he be found indigent and, if he is indigent, that he pay 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). Plaintiff has submitted the necessary trust fund account statement. From the statement, I find that plaintiff has no money in his regular or release accounts and that he has received no income or gifts of cash in the past six months. Accordingly, I conclude that plaintiff qualifies under 28 U.S.C. § 1915(b)(4) to proceed in forma pauperis without paying an initial partial payment of the \$105 fee for filing his appeal, because he has neither the assets nor the means to make such a payment. Nevertheless, plaintiff still owes the \$105 fee. He will have to pay it in monthly installments if and when he receives periodic deposits to his prison account.

ORDER

IT IS ORDERED that plaintiff's motion for leave to proceed in forma pauperis on appeal is GRANTED. Although plaintiff does not presently have the means to pay an initial partial payment of the fee for filing his appeal, his account will be monitored and the fee taken in monthly installments pursuant to 28 U.S.C. § 1915(b)(2) when the money exists.

Entered this 26th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge