

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

NATHANIEL ALLEN LINDELL,

Petitioner,

v.

ORDER

02-C-473-C

SCOTT McCALLUM, Governor of Wisconsin; JON LITSCHER, Secretary of Wisconsin Department of Corrections; DICK VERHAGEN, former Administrator of Wisconsin's Department of Adult Institution; STEVEN CASPERSON, current Administrator of Wisconsin's Dept. of Adult Institutions; LAURA WOOD, policy advisor for D.A.I.; GARY R. McCAUGHTRY, former Warden of Waupun Correctional Institution; GERALD BERGE, Warden of Supermax; CINDY O'DONNELL, assistant deputy of Jon Litscher; JOHN RAY, Corrections Complaint Examiner; SANDY HAUTAMAKI, former inmate complaint examiner at W.C.I., now a C.C.E.; CATHY JESS and JODINE DEPPISCH, deputy wardens at W.C.I.; N. SALMON, secretary of Gerald Berge; PETER HUIBREGTSE, former security director at W.C.I., now deputy warden at Supermax; MARC CLEMENTS, Security Director at W.C.I.; CURT JENSSEN, Manager of W.C.I.'s Health and Segregation Unit; DEB TETZLAFF, W.C.I.'s program director; CAPTAIN STEVE SCHUELER, a Captain at W.C.I.; CAPTAIN MURASKI, a Captain at W.C.I.; LINDA ALSUM-O'DONOVAN, and JAMES MUENCHOW, both inmate complaint examiners (I.C.E.) at W.C.I.; ELLEN RAY, TOM "DOE," both I.C.E.'s at Supermax; SANDRA GRONDIN, C.O. SHANNON, SGT. HOTTENSTEIN and SGT. O'ROURKE - all guards at Supermax; J.C. SMITS, Mailroom employee at W.C.I.; JIM WEGNER, Supervisor of W.C.I.'s chapel; CHAPLAINS NORTH and FRANCIS, at W.C.I.; C.O. WATSON, guard at W.C.I.; CAPTAIN TODD OVERBO at Supermax; VICKI SHARPE, Supermax's Program Director; JOHN SHARPE, Manager of Delta Unit,

formerly Fox Trot Unit at Supermax; CAPTAIN LINJER at Supermax; WILLIAM SCHULTZ; LT. RANDALL GARRITSON and CAPT. ECKSTEIN, staff at W.C.I.; MR. HOMBE, SGT. HOTTENSTEIN, Supermax staff,

Respondents.

Judgment was entered in this case on February 3, 2003, denying petitioner's request for leave to proceed in forma pauperis. Petitioner filed a timely motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e), which was denied on February 19, 2003. Now petitioner has filed a notice of appeal. Because the notice is not accompanied by the \$105 fee for filing his appeal, I construe petitioner's notice to include a request for leave to proceed on appeal in forma pauperis.

Petitioner's request for leave to proceed in forma pauperis on appeal is governed by the 1996 Prison Litigation Reform Act. This means that this court must determine first whether petitioner's request 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. Petitioner 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 petitioner's proceeding with his appeal in forma pauperis is the requirement 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). Petitioner's trust account statement filed with his complaint in August 2002 covers a time period from February 19, 2002, through August 19, 2002. The information contained in it is too old to satisfy the statutory requirement that the assessment be calculated from a trust fund account statement for the six month period "immediately preceding the filing of the . . . notice of appeal" 28 U.S.C. § 1915(a)(2).

Accordingly, IT IS ORDERED that petitioner may have until March 24, 2003, in which to submit a certified copy of his trust fund account statement for the six-month period beginning approximately August 24, 2002, and ending approximately February 24, 2003. If, by March 24, 2003, petitioner fails to submit the required statement or show cause for his failure to do so, then I will deny his request for leave to proceed in forma pauperis on the ground that he has failed to show that he is entitled to indigent status on appeal.

Entered this 28th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge