

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

GARY CARNELL TUCKER SR.,

Petitioner,

v.

J.T. O'BRIEN, Warden,
FCI - Oxford Wisconsin,

Respondent.

ORDER

00-C-332-C

This habeas corpus petition brought pursuant 28 U.S.C. § 2241 was filed in this court at a time when the law in the Seventh Circuit was that district courts were to treat habeas corpus petitions that concerned conditions of confinement, a deprivation of good time credits, or other matters that occur at the prison as civil actions under the 1995 Prison Litigation Reform Act. See Newlin v. Helman, 123 F.3d 429 (7th Cir. 1997) and Thurman v. Gramley, 97 F.3d 185 (7th Cir. 1996). This is such an action. Therefore, I examined petitioner's trust fund account statement in accordance with 28 U.S.C. § 1915(b) and determined that he did not qualify for indigent status for the purpose of paying the \$5 filing fee. Petitioner then paid the fee.

On August 31, 2000, petitioner's petition was dismissed on its merits for his failure to show that he is in custody in violation of the Constitution or laws of the United States. Judgment of dismissal was entered that same day. Subsequently, petitioner filed a motion to alter or amend the judgment, which was denied in an order dated September 20, 2000. Now petitioner has filed a notice of appeal.

Because petitioner's notice of appeal 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. The Prison Litigation Reform Act does not apply to this request. This is because the Court of Appeals for the Seven Circuit now has ruled in Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000) that petitions for writs of habeas corpus brought pursuant to 28 U.S.C. § 2241 are not subject to the Act. Therefore, petitioner may proceed in forma pauperis on appeal if the district court concludes that he qualifies for indigent status on appeal and does not find that the appeal is not taken in good faith.

From the financial information petitioner provided the court at the time he filed his petition, I find that he qualifies for indigent status on appeal. Moreover, I do not intend to certify that his appeal is taken in bad faith.

Accordingly, IT IS ORDERED that petitioner's request for leave to proceed in forma

pauperis on appeal is GRANTED.

Entered this 16th day of November, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge