

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

ALGENONE KEONTA WILLIAMS,

Petitioner,

v.

JON LITSCHER,
JAN MINK and
CHRISTI DIETZ,

Respondents.

ORDER

00-C-451-C

Petitioner Algenone Williams has filed a document dated November 17, 2000, which I construe as a second motion for reconsideration of the order of September 28, 2000, denying his request for leave to proceed in forma pauperis in this action on the ground that he is not paying the debt he incurred under the 1995 Prison Litigation Reform Act in connection with other lawsuits he filed in this district.

In this motion, petitioner contends that it is unfair to hold him personally accountable for failing to make installment payments on the filing fees he owes in case nos. 98-C-823-C, 99-C-392-C and 99-C-806-C, because he authorized prison officials to deduct the fees from his

account at the time he filed his complaints. In addition, petitioner argues that because he is presently destitute, and because he is being held in segregation at the Supermax Correctional Institution without any opportunity to earn an income with which to pay past fees, he should qualify for indigent status under 28 U.S.C. § 1915(b)(4).

Petitioner's first argument is unpersuasive. As I advised him in the September 28 order entered in this case, the Court of Appeals for the Seventh Circuit made it explicit in Lucien v. DeTella, 1141 F.3d 773, 776 (7th Cir. 1998), that prisoner litigants are to keep a watchful eye on their accounts and insure that amounts owed under the Prisoner Litigation Reform Act are withdrawn on a monthly basis. Petitioner did not do that. He cannot lay all of the blame for his failure to pay on prison officials.

However, petitioner's second argument has legal merit. 28 U.S.C. § 1915(b)(4) provides that

In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

Thus, if petitioner has no assets available to him and no means with which to pay his past debt or an initial partial payment in this case, he should not be barred from proceeding in forma pauperis, assuming his complaint survives review under 28 U.S.C. § 1915(e)(2). The only financial statements on file in this case are trust fund account statements from the period

beginning January 1, 1999 to May 2, 1999, and May 4, 2000 to June 21, 2000. If petitioner is to be found destitute in this case, he will have to submit a certified trust fund account statement for the period beginning June 21, 2000 to the present, that shows he has no assets and no income.

ORDER

IT IS ORDERED that petitioner's second motion for reconsideration of the order of September 28, 2000, denying him leave to proceed in forma pauperis on the ground that he has not paid fees owed in this court under the 1995 Prison Litigation Reform Act is GRANTED.

Petitioner may have until December 22, 2000, in which to submit a certified trust fund account statement for the period beginning June 21, 2000 to the present. If, by December 22, 2000, petitioner fails to submit the statement or show cause for his failure to do so, I will deny his request for leave to proceed in forma pauperis in this case for his failure to make the required showing that he is destitute.

Entered this 1st day of December, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge