

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

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JONATHAN P. COLE,

Petitioner,

v.

SUE FRANTZ; CATHERINE BRENNAN;
KENNETH R. MORGAN; JOHN RAY;
CINDY O'DONNELL,

Respondents.

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ORDER

00-C-486-C

In early August 2000, petitioner submitted a complaint for filing in this court. On August 10, 2000, I entered an order allowing him the option of withdrawing the case before any provisions of the 1996 Prison Litigation Reform would take effect, including the provision that he pay the full amount of the fee for filing his case. I assessed petitioner an initial partial payment of \$2.56 and advised him that if, by September 11, 2000, he failed to pay the assessed amount or explain his failure to do so, the court would assume that he wished to withdraw the action voluntarily and the clerk of court was to close the file without prejudice to petitioner's filing his case at a later date. On August 31, 2000, petitioner paid \$2.85, slightly more than the assessed amount, thus indicating his intention to proceed with the case.

Now petitioner has filed a letter dated October 10, 2000, in which he notes that he has been told that he has not properly alleged facts to support his constitutional claim in his complaint and that because he “cannot afford a strike for not stating a claim,” he requests that the court allow him to dismiss his case voluntarily.

If he wishes, petitioner is free to withdraw his action voluntarily, without prejudice to his filing his case at a later date. As he seems to be aware, by doing so, he avoids a decision on the merits of the claims raised in his complaint and the possible recording of a strike against him, if a strike were to be warranted. However, before I will accept petitioner’s notice of voluntary dismissal, petitioner should be aware that it is too late for him to be relieved of his obligation to pay the \$150 filing fee or to get a refund of his initial partial payment. When petitioner paid the initial partial payment assessed in this case, he “brought” his action within the meaning of 28 U.S.C. § 1915(b)(1)(a). The initial partial payment was processed by the court’s financial clerk and the matter of petitioner’s eligibility to proceed in forma pauperis was taken under advisement, even though a written decision has not yet been issued.

Because petitioner is bound by the 1996 Prison Litigation Reform Act to pay the fee for filing this case, he may decide that he does not wish to dismiss his action voluntarily.

ORDER

IT IS ORDERED that

1. Petitioner may have until November 1, 2000, in which to confirm his intention to dismiss this case voluntarily or to advise the court that he wishes to proceed with the case.

2. If, by November 1, 2000, petitioner fails to respond to this order, I will assume that he wants the case to be dismissed voluntarily and the clerk of court is directed to close the file.

3. Whether or not this case is dismissed voluntarily, petitioner owes \$147.15, which must be paid in monthly installments in accordance with 28 U.S.C. § 1915(b)(2).

Entered this 18th day of October, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge