

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

JOHN RONALD HAAS,

Petitioner,

v.

WISCONSIN DEPARTMENT OF
CORRECTION DOCTOR METODIO
REYES, MARY ANNE SIMONIS, R.N.,
JULE DEGRAVE, R.N.,

Respondents.

ORDER

03-C-224-C

On May 28, 2003, judgment was entered in this case dismissing petitioner's claims against the respondents on the ground that petitioner's complaint failed to state a claim against them upon which relief may be granted. Now petitioner has filed a notice of appeal.

As an initial matter, I note that petitioner's appeal may be untimely. However, only the court of appeals may determine whether it has jurisdiction to entertain an appeal. Hyché v. Christensen, 170 F.3d 769, 770 (7th Cir. 1999). The district court's role with respect to an appeal is limited. A district court has authority to deny a prisoner's request for leave to proceed in forma pauperis under 28 U.S.C. § 1915 only for one or more of the following

reasons: the prisoner has not established indigence, the appeal is in bad faith or the prisoner has three strikes. § 1915(a)(1),(3) and (g). Sperow v. Melvin, 153 F.3d 780 (7th Cir 1998). In this instance, petitioner will not be permitted to proceed on appeal in forma pauperis because I must certify that his appeal is not taken in good faith.

In Lucien v. Roegner, 682 F.2d 625, 626 (7th Cir. 1982), the court of appeals instructed district courts to find bad faith where a petitioner is appealing the same claims the court found to be without legal merit in denying the petitioner leave to proceed on his complaint. Although the standard for finding bad faith was altered temporarily in a later case, Newlin v. Helman, 123 F.3d 429 (7th Cir. 1997), the Lucien standard has been reinstated. See Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000).

Petitioner was not allowed to proceed on his complaint in this court. The screening required by the 1996 Prison Litigation Reform Act revealed that there was no legal merit to petitioner's claim that it was criminally reckless for respondents to fail to inform him about a slightly elevated cholesterol level or treat the condition. Although I stated that petitioner's claim "failed to state a claim upon which relief may be granted," I could have described the claim as "without legal merit" or "legally frivolous." Because petitioner is appealing the same claim I have already ruled lack legal merit, I will certify that his appeal is not taken in good faith.

A prisoner whose appeal is certified as not having been taken in good faith cannot

take advantage of the initial partial payment provision of § 1915. Instead, he owes the \$105 fee in full immediately, and if the money does not presently exist in his prison account, then prison officials are required to calculate monthly payments according to the formula set out in 28 U.S.C. § 1915(b)(2) and forward those payments to the court until the debt is satisfied. Therefore, if petitioner has sufficient funds in his regular and release accounts to pay the full \$105, it must be remitted promptly to the clerk of court in one payment. Petitioner may delay payment of the fee only if he challenges in the court of appeals within thirty days of the date he receives this order this court's certification that the appeal is not taken in good faith. In that instance, the court of appeals may decide that the certification is improper, in which case the matter will be remanded to this court for collection of an initial partial payment of the fee before the court of appeals will decide whether petitioner's appeal is legally frivolous. If the court of appeals determines that this court was correct that the appeal is not taken in good faith, then the payment will once again be due in full immediately. Whatever the scenario, petitioner is responsible for insuring that the required sum is remitted to the court at the appropriate time. If he fails to pay for any reason other than total lack of money, he will be giving up his right to file future suits in forma pauperis. See Thurman v. Gramley, 97 F.3d 185, 188 (7th Cir. 1996).

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that petitioner's appeal is not taken in good faith.

If petitioner intends to challenge this court's certification that his appeal is not taken in good faith, he has 30 days from the date he receives this order in which to file with the court of appeals a motion for leave to proceed in forma pauperis on appeal. His motion must be accompanied by a copy of the affidavit prescribed in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

Entered this 1st day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge