

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

LEE SIMMONS,
No. 00192235,

Petitioner,

v.

SECRETARY MATTHEW FRANK;
JON LITSCHER; DICK VERHAGEN;
SHARON ZUNKER; PATRICK J. KNOWLES;
DR. ROYLE EENIGENBURG, JR., M.D.;
DR. V. STONE; DR. DONALD HANDS;
KENNETH MORGAN; LINDA MORGAN;
CHRIS ELLARD; DR. WITTE; SHARIDEN ASH;
PHIL KINGSTON; GREG GRAM; DR. JANET
WALSH; DR. TRACY JOHNSON; DR. TRINIDAD;
TIM DOUMA; AMY MILLARD; JIM SUTTEN;
DR. GARY BRIDGEWATER; PAT SIEDSCHLAG;
KRISTI DIETZ; RADALL R. HEPP; JEFF
WYDEVEN; BILL NOLAN; JOHN RAY;
SGT. ALLEN; SGT. WINSLOW; KEVIN
POTTER; MS. HACKBART; LENARD WELL;
and DR. JOHN ROBERTS,

Respondents.

ORDER

03-C-365-C

In an order entered on July 16, 2003, I denied petitioner's request for leave to proceed in forma pauperis in this action because he does not qualify for pauper status under

28 U.S.C. § 1915(g), the 1996 Prison Litigation Reform Act's "three-strike" provision. I advised petitioner that even if he had not struck out, he has given up his right to proceed in forma pauperis under the law established in Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), because he has means to pay the debts he incurred in filing other cases in this court but is not doing so.

Now petitioner has filed a document dated July 17, 2003, which I construe as a motion to alter or amend the July 16 order. In this document, petitioner contends that I erred in finding that he has filed three previous lawsuits that were dismissed on the ground that they were frivolous, malicious, or failed to state a claim upon which relief may be granted. To prove this point, petitioner directs the court's attention to a copy of a Wisconsin Department of Justice form titled "Certification as to Three or More Dismissals Under Wis. Stat. § 801.02(7)(d)," in which a department of justice employee certifies that the department has "no records showing that [petitioner] has three or more dismissals within the meaning of Wis. Stat. § 801.02(7)(d)."

The fact that the Wisconsin Department of Justice's records do not contain information about petitioner's past lawsuits filed in federal court does not mean that those former lawsuits do not exist. In the July 16 order, I referred petitioner to three cases in the federal court's database that were dismissed as legally frivolous or for failure to state a claim upon which relief may be granted. Petitioner has suggested no reason why it was error for

this court to consider his previously dismissed federal lawsuits in determining his three-strike status under § 1915(g). Therefore, his motion to alter or amend the July 16 order on this point will be denied.

Likewise, petitioner's argument is unavailing that I erred in finding that he has not been paying his old debts in this court. Petitioner takes offense at the suggestion that he has not been responsible about paying his debts . He contends that prison officials have been taking money out of his account on a regular basis for the purpose of paying down his debts and that if the court's records do not show the payments being received, it is not because he is ignoring his financial obligations.

As I noted in the July 16 order, the trust fund account statement petitioner submitted in connection with this case shows that petitioner has been earning income every two weeks since at least December of 2002. That same statement reveals that no amount is being set aside to pay court filing fees. This court's financial records show that petitioner has not paid any amount of the \$137.83 balance due since September 25, 2000, in Simmons v. Morgan, 00-C-380-C; he has not made a payment since April 2000 on the \$85.04 balance due in Simmons v. Brennan, 99-C-691-C; and he has not made a payment since April 2000 on the \$60 balance due in Simmons v. Ash, 99-C-489-C. Despite petitioner's protests that there is a mistake in the court's records, he has not submitted a copy of his financial records for the period between April 2000 and December 2002 to prove that a percentage of the

deposits made to his account over that period was deducted and designated for payment of the fees owed in this court. Until petitioner makes such a showing, I have no reason to doubt the accuracy of this court's records.

Accordingly, IT IS ORDERED that petitioner's motion to alter or amend the July 16, 2003 order entered in this case is DENIED.

Entered this 28th day of July, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge