

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

MICHAEL HILL,

Petitioner,

ORDER

v.

04-C-732-C

GARY THALACKER, GREGORY
GOODHUE, MICHAEL BARTKNECHT,
TERRY CARD and JOHN J. SHOOK,
UNICOR & Bureau of Prisons Employees,

Respondents.

In an order dated September 9, 2004, in Hill v. Scibana, 04-C-657-C, this court directed petitioner Michael Hill to advise this court whether he wished his pleading treated as a petition for a writ of habeas corpus (because petitioner had filed his claim on forms designed for habeas corpus and had requested release from confinement) or as a civil action under Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971) (because petitioner's underlying complaint is one of racial discrimination and retaliation for exercising his constitutional rights). I advised petitioner that if he wanted to proceed under Bivens, he would owe \$43.39 as an initial partial payment of the \$150 fee for filing a civil action, and

that I would apply the \$5 fee he submitted with his original pleading toward that amount.

Subsequently, petitioner advised the court that he wished his pleading to be treated as a civil action under Bivens. To make clear his intent, petitioner submitted a new pleading in which he dropped Joseph Scibana as a respondent and named as respondents in his place Gary Thalacker, Gregory Goodhue, Michael Bartknecht, Terry Card and John J. Shook, who are alleged to be employees of UNICOR and the Federal Bureau of Prisons. In addition, petitioner's revised pleading eliminated his request for habeas corpus relief and sought only monetary damages for respondents' alleged wrongful acts. When he filed this proposed amended pleading, petitioner advised the court that he had arranged to send the court a check in the amount of \$145 to cover the remainder of the \$150 filing fee.

In an order entered on September 29, 2004, I directed the clerk of court to file petitioner's revised pleading in a new civil action and assign the action a new number (which is now this action assigned case no. 04-C-732-C). In addition, I directed the clerk to retain one copy of petitioner's original pleading in case no. 04-C-657-C and close that file. Finally, I directed that the \$5 payment that petitioner submitted in connection with case no. 04-C-657-C was to be applied toward the \$43.39 initial partial payment that petitioner owes for filing his civil action.

As of this date, petitioner has not paid the remainder of the filing fee by submitting a \$145.00 check, or the remainder of his initial partial payment, which would amount to

\$38.39. However, he has submitted a second revised pleading, which is nearly identical to his first revised pleading. He asks that the court accept the second revised pleading as the operative pleading in this case.

Because I have not yet screened petitioner's complaint, I am prepared to accept his second revised pleading as the operative pleading in this case. However, this case cannot be screened as required under the 1996 Prison Litigation Reform Act and 28 U.S.C. §§ 1915(a)(2) or 1915A, until petitioner pays either \$38.39 or \$145.00.

ORDER

IT IS ORDERED that petitioner may have until October 18, 2004, in which to submit a check or money order made payable to the clerk of court in the amount of \$38.39, which constitutes the remainder of the initial partial payment he owes in this case, or \$145, to cover the full amount of the \$150 filing fee. If, by October 18, 2004, petitioner fails to pay either payment listed above or show cause for his failure to do so, he will be held to have withdrawn this action voluntarily. In that event, the clerk of court is directed to close this

file without prejudice to petitioner's filing his case at a later date.

Entered this 7th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge