

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

JOSE D. FUENTES,

Plaintiff,

ORDER

v.

04-C-763-C

DANIEL J. BENIK, Warden, Stanley
Correctional Institution,

Defendant.

On January 27, 2005, this court entered an order informing petitioner that before this court could rule on his request for a certificate of appealability, petitioner had either to pay \$255 to the clerk of this court as his appellate filing and docketing fee, or to file a motion for leave to proceed in forma pauperis on appeal. The court informed petitioner that he had until February 7, 2005 in which to exercise one of these options.

It is now February 18, 2005, and petitioner has not submitted either the filing fee or a motion and supporting affidavit for leave to proceed in forma pauperis on appeal. Accordingly, insofar as petitioner's request for a certificate of appealability includes an implicit request for leave to proceed in forma pauperis on appeal, that request is DENIED for his failure to make any showing of indigency. Because petitioner cannot proceed on appeal absent payment of the

filing fee or a showing of indigency, it is unnecessary to decide his request for a certificate of appealability.

Entered this 18th day of February, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge