

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

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NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

ORDER

05-C-003-C

PETER HUIBREGTSE; GARY BOUGHTON;  
STEVEN HOUSER; CAPTAINS STEVE  
SCHUELER, THOMAS CORE, KURT LINJER,  
GILBERG and GARY BLACKBOURN; C.O.  
LANGE and SGT. CARPENTER,

Defendants.  
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Judgment was entered in this case on October 25, 2005, granting defendants' motion for summary judgment and closing this case without prejudice for plaintiff's failure to exhaust his administrative remedies. Plaintiff filed a timely motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e), which was denied on November 15, 2005. Now plaintiff has filed a notice of appeal and a request for leave to proceed on appeal in forma pauperis.

Plaintiff's request for leave to proceed in forma pauperis on appeal is governed by the 1996 Prison Litigation Reform Act. This means that this court must determine first whether

plaintiff's request must be denied either because he has three strikes against him under 28 U.S.C. § 1915(g) or because the appeal is not taken in good faith. Plaintiff does not have three strikes against him and I do not intend to certify that his appeal is not taken in good faith. Although the question may arise whether the dismissal of this case without prejudice constitutes a final decision over which the court of appeals has jurisdiction, only the court of appeals determines whether an appeal satisfies jurisdictional requirements. Hyche v. Christensen, 170 F.3d 769 (7th Cir. 1999) (overruled on other grounds) (citing Sperow v. Melvin, 153 F.3d 780 (7th Cir. 1998)). That determination is unrelated to the determination whether an appeal is taken in good faith.

The only other hurdle to plaintiff's proceeding with his appeal in forma pauperis is the requirement that he make an initial partial payment of the filing fee that has been calculated from a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. 28 U.S.C. § 1915(a)(2). Plaintiff has not submitted the necessary trust fund account statement. Until he does so, I cannot determine whether he is currently indigent and, if he is, the amount of his initial partial payment.

Accordingly, IT IS ORDERED that plaintiff may have until January 10, 2006, in which to submit a certified copy of his trust fund account statement for the six-month period beginning approximately July 1, 2005 to approximately January 1, 2006. If, by January 10,

2006, plaintiff fails to submit the required trust account statement or show cause for his failure to do so, then I will deny his request for leave to proceed in forma pauperis on the ground that he has failed to show that he is entitled to indigent status on appeal.

Entered this 21st day of December, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge