

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

---

MR. ERVIE GRAY,

Petitioner,

v.

GERALD A. BERGE, Warden;  
JEFFREY P. ENDICOTT, Warden;  
PETER A. HUIBREGTSE, Deputy Warden;  
GARY BOUGHTON, Security Director;  
SGT. J. HUIBREGTSE, Sergeant of Mailroom;  
JAMES GREER, Director of B.C.H.S.;  
S.M.C.I./W.S.P.F., I.C.R.S.;  
DEPARTMENT OF CORRECTION;  
RICHARD VERHAGEN, Administrator,

Respondents.

---

ORDER

05-C-119-C

Following this court's denial of petitioner's motion pursuant to Fed. R. Civ. P. 59 to alter or amend the order denying him leave to proceed in forma pauperis because he is ineligible for pauper status under 28 U.S.C. § 1915(g), petitioner has filed a notice of appeal. Because the notice is not accompanied by the \$255 filing fee, I construe petitioner's notice to include a request for leave to proceed in forma pauperis on appeal.

As I told petitioner when I denied his motion to alter or amend the earlier order, he

cannot proceed in forma pauperis on appeal for the same reason I have ruled he cannot proceed in forma pauperis in this court. He is not eligible for pauper status under § 1915(g). If petitioner intends to challenge this court's determination that he has incurred three strikes for filing frivolous suits, he has 30 days from the date of this order to ask the court of appeals to allow him to proceed in forma pauperis by submitting the request and documentation required under Fed. R. App. P. 24(a)(5). Petitioner is cautioned, however, that if the court of appeals decides that it was not an error to find that § 1915(g) bars him from proceeding in forma pauperis, he will owe the \$250 fee for filing his action in this court and the \$255 fee for filing his notice of appeal and these amounts will be due immediately.

#### ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on appeal is DENIED because petitioner is ineligible for pauper status under 28 U.S.C. § 1915(g).

Entered this 7th day of April, 2005.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge