

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

ROBERT E. SALLIE,

Petitioner,

v.

MATTHEW J. FRANKS,
GERALD BERG,
DANIEL HANDS,

Respondents.

ORDER

05-C-40-C

Judgment was entered in this case on February 24, 2005, denying petitioner's request for leave to proceed in forma pauperis on his claim under the Eighth Amendment because it lacked legal merit and recording a strike against petitioner. Now petitioner has filed a notice of appeal and a request for leave to proceed in forma pauperis on appeal.

The strike recorded in this case is petitioner's third strike under 28 U.S.C. § 1915(g). Petitioner also earned strikes in two earlier filed cases, Tiggs v. Berge, 01-C-314-C (Sept. 24, 2001) and Sallie v. Litscher, 02-C-63-C (March 13, 2002). Because petitioner has accumulated three strikes, so long as he is incarcerated he cannot file any new lawsuit or an appeal without prepaying the filing fee unless he can show that he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Petitioner has not made the required showing

of imminent danger of a serious physical injury in this case. Therefore, he cannot take advantage of the initial partial payment provision of § 1915. He owes the \$255 fee in full immediately.

Petitioner may delay payment of the \$255 fee under one circumstance; that is, if he challenges in the court of appeals within thirty days of the date he receives this order the decision to deny his request for leave to proceed in forma pauperis on appeal because of his § 1915(g) status. Fed. R. App. P. 24(a)(5). If the court of appeals decides that it was improper to issue a third strike against petitioner, then the matter will be remanded to this court for a determination whether petitioner's appeal is taken in good faith. If the court of appeals determines that the district court was correct finding that § 1915(g) bars petitioner from taking his appeal in forma pauperis, the \$255 filing fee payment will be due in full immediately. Whatever the scenario, petitioner is responsible for insuring that the required sum is remitted to the court at the appropriate time.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on

appeal is DENIED because three strikes have been recorded against him under 28 U.S.C. § 1915(g).

Entered this 10th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge