

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

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JESUS MAR GARCIA,

Petitioner,

v.

STEVEN HOBART, Warden,

Respondent.

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ORDER

05-C-611-C

On the basis of facts drawn from petitioner's petition and respondent's response, I dismissed this petition for a writ of habeas corpus brought pursuant to 28 U.S. C. § 2241 on January 30, 2006, after concluding that petitioner had failed to show that his term of custody was extended in violation of the Constitution or laws of the United States. Now petitioner has filed a notice of appeal and requests leave to proceed in forma pauperis on appeal. In support of the request, petitioner has submitted an affidavit of indigency and a prison account statement revealing his average monthly deposits and his current balance.

Petitioner's appeal is not subject to the 1996 Prison Litigation Reform Act. See

Walker v. O'Brien, 216 F.3d 626, 628-629 (7th Cir. 2000) ("the PLRA does not apply to any requests for collateral relief under 28 U.S.C. §§ 2241, 2254, or 2255"). Nevertheless, in determining whether a petitioner is eligible for indigent status on appeal under § 1915, the court must find both that the petitioner does not have the means to pay the \$255 fee for filing his appeal and that the appeal is taken in good faith. See 28 U.S.C. § 1915(a)(1) and (3). I do not intend to certify that petitioner's appeal is not taken in good faith.

From petitioner's trust fund account statement, I find that he has the means to prepay a portion of the fee for filing his appeal and qualifies for indigent status with respect to the remainder of the fee.

In determining whether a habeas corpus petitioner is eligible for pauper status, it is my practice to apply the formula set out in 28 U.S.C. § 1915(b)(1). Specifically, from petitioner's trust fund account statement, I calculate 20% of the greater of the average monthly deposits or the average monthly balance in the account. If the 20% figure is more than the fee petitioner owes for filing his appeal, he may not proceed in forma pauperis. If the 20% figure is less than \$255, he must prepay whatever portion of the fee the calculation yields. In this case, petitioner's average monthly deposits is \$234.06. Twenty percent of that amount is \$46.81. I cannot calculate petitioner's average monthly balance, because this information does not appear on the statement. However, I infer from the fact that petitioner's balance was \$67.51 at the time he filed his statement that his average monthly

balance would probably not exceed his average monthly deposits.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on appeal is GRANTED, on the condition that petitioner prepay \$46.81 of the \$255 filing fee. If, by March 1, 2006, petitioner fails to submit a check or money order made payable to the clerk of court in the amount of \$46.81 as prepayment of a portion of the fee for filing his appeal, then I will notify the court of appeals of that fact so that it may take whatever action is appropriate with respect to petitioner's appeal.

Entered this 8th day of February, 2006.

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