

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

JEFFREY P. SULASKI,

Petitioner,

v.

STEPHEN HOBART,

Respondent.

ORDER

05-C-746-C

On February 6, 2006, this court entered judgment dismissing petitioner Jeffrey Sulaski's petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2241. Now before the court is petitioner's motion for an enlargement of time in which to file a notice of appeal.

A party in a § 2241 action has 60 days from the date of entry of the judgment in which to file a notice of appeal, Fed. R. App. P 4(a)(1)(B), and 30 days beyond that deadline in which to file a motion for extension of time in which to appeal, Fed. R. App. P. 4(a)(5), on a showing of good cause or excusable neglect. Extensions of time may not exceed 30 days after the original prescribed time for filing a notice of appeal expires or 10 days after the date on which the order granting the extension of time is entered, whichever is longer. Fed. R.

App. P. 9(a)(5)(C). In this case, the original sixty-day period expired on April 7, 2006, the same day petitioner filed his motion for an extension.

Petitioner explains that his failure to file a timely notice of appeal is the result of a separation from his property following a cell change and inexplicable difficulty in obtaining a copy of Piggie v. Cotton, 344 F.3d 674 (7th Cir. 2003), a case this court discussed in its order dismissing petitioner's petition. In addition, petitioner states that sometime in March 2006, he filed a request with the Bureau of Prisons under the Freedom of Information Act to acquire copies of program statements he says have a "direct correlation to [] petitioner's memorandum of law submitted to support his § 2241." To date, petitioner has not received a response to his FOIA request.

Although petitioner's excuses are meager ones, they are sufficient to find good cause for petitioner's failure to meet the 60-day deadline for filing his notice of appeal. Therefore, I will grant petitioner's motion. For petitioner's information, I am enclosing to him with this order a copy of Piggie v. Cotton. In addition, petitioner should be aware that there is only a small chance that his FOIA request will be answered before his extended time expires. Therefore, he may wish to seek copies of the program statements some other way or prepare his argument without them.

One other matter requires attention. Although any appeal petitioner may file will not be subject to the 1996 Prison Litigation Reform Act, 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"), petitioner will be required either to pay the full fee for filing his notice of appeal or request leave to proceed on appeal in forma pauperis. 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 \$455 fee for filing his appeal (the fee was raised to \$455 from \$255 on April 9, 2006) and that the appeal is taken in good faith. 28 U.S.C. 1915(a)(1) and (3). I express no opinion at this time whether petitioner's appeal would have to be certified as not taken in good faith.

In order to determine whether petitioner is financially eligible to proceed on appeal in forma pauperis, however, it is my practice to apply the formula set out in 28 U.S.C. 1915(b)(1). This means that petitioner will have to submit with his notice of appeal a trust fund account statement for the six- month period immediately preceding the filing of his appeal. From this statement, I will add the deposits made to petitioner's account and calculate 20% of the greater of the average monthly deposits or the average monthly balance in his 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 \$455, he must pay whatever portion of the fee the calculation yields. Knowing this, petitioner may be able to calculate for himself what he would have to pay toward the fee for filing his appeal and submit a check or money order made payable to the clerk of court in that amount at the time

he files his notice of appeal.

ORDER

IT IS ORDERED that petitioner's motion for an enlargement of time to file a notice of appeal is GRANTED. Petitioner may have until May 5, 2006, in which to file his notice of appeal in this case.

Entered this 13th day of April, 2006.

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