

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

WARREN GAMEAL LILLY, JR.,

ORDER

Petitioner,

v.

06-C-008-C

ALLAN B. TORHORST, Circuit Judge,
Racine County; QUALA CHAMPAGNE, Warden,
Racine Correctional Institution; RONALD
MOLNAR, Security Director; MANUEL
JOSEPH, Physician; SUE NYGREN, Nursing
Supervisor; BRENDA LABELLE, Institution
Complaint Examiner; JAMES LABELLE, Authorized
Reviewing Authority; LANCE LUEDTKE, Crisis
Worker; JAMES GREER, Director, Bureau of
Health Services; DR. DAVID BURNETT,
Medical Director; REGIONAL NURSING
DIRECTOR (NAME NOT KNOWN); KEVIN
POTTER, Chief Legal Counsel, WI Department
of Corrections; TIMOTHY CORRELL, Physician,
Dodge Correctional Institution; THOMAS
WILLIAMS, Physician; SCOTT HOFTIEZER,
Physician; BETH DITTMAN, Health Services
Unit Manager; CATHY JESS, Warden; ANN
KRUEGER, Legal Officer; JOANNE BOVEE,
Institution Complaint Examiner; and MARGIE
BARNES, Medical Social Worker,

Respondents.

In an order dated February 13, 2006, I denied petitioner leave to proceed in forma pauperis on the claims he raised in his complaint in this case after concluding that the complaint was legally meritless. Now petitioner has filed a notice of appeal, together with a request for leave to proceed in forma pauperis on appeal.

In determining whether petitioner may appeal in forma pauperis, I must consider whether he has three strikes under 28 U.S.C. § 1915(g) and, if not, whether he is indigent and whether his appeal is taken in good faith. Petitioner does not have three strikes and the trust fund account statement he submitted with his notice of appeal reveals that he is indigent. Nevertheless, petitioner cannot proceed in forma pauperis on appeal because I must certify that his appeal is not taken in good faith.

I presume petitioner intends to raise on appeal the claims he raised in his complaint. The Court of Appeals for the Seventh Circuit has instructed district courts to find bad faith where a petitioner is appealing the same claims the district court found to be without legal merit in his complaint. Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000). Because petitioner is attempting to raise on appeal the same legally meritless claims he raised in his complaint, I must certify his appeal as not being taken in good faith.

Because I am certifying petitioner's appeal as not having been taken in good faith, petitioner cannot proceed with his appeal without prepaying the \$255 filing fee unless the court of appeals gives him permission to do so. Pursuant to Fed. R. App. P. 24, petitioner

has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order. Petitioner should be aware that if the court of appeals agrees with this court that the appeal is not taken in good faith, it will send him an order requiring him to pay all of the filing fee by a set deadline. If petitioner fails to pay the fee within the deadline set, the court of appeals ordinarily will dismiss the appeal and order this court to arrange for collection of the fee from petitioner's prison account.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that petitioner's appeal is not taken in good faith.

Entered this 23rd day of February, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge