

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

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VINCENT L. AMMONS,

Petitioner,

v.

DR. DEBB LEMKE,  
DR. BRUCE GERLINGER,  
RENEE ANDERSON,  
BECKY DRESSLER and  
RITA ERICSON,

Respondents.  
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ORDER

06-C-20-C

Petitioner Vincent Ammons, a prisoner at the Stanley Correctional Institution in Stanley, Wisconsin, has filed a proposed civil complaint and a request for leave to proceed in forma pauperis. The request will be denied, because pursuant to 28 U.S.C. § 1915(g), petitioner does not qualify for in forma pauperis status.

Section 1915(g) reads as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be

granted, unless the prisoner is under imminent danger of serious physical injury.

On at least three prior occasions, petitioner Ammons has been denied leave to proceed in forma pauperis in lawsuits or appeals that were legally frivolous. See Ammons v. Helgerson, 95-C-394-C, decided June 16, 1995 (W.D. Wis.); Ammons v. Radtke, 95-C-898, decided Dec. 18, 1995; and Ammons v. Radtke, 95-C-898, decided September 5, 1996 (7th Cir.).

Moreover, petitioner's complaint does not allege facts from which an inference may be drawn that he is under imminent danger of serious physical injury. In his complaint, petitioner alleges that between June 1, 2005 and August 12, 2005, defendants failed to provide him with sufficient diagnostic testing to determine that his wrist was fractured. He alleges after he was x-rayed and the fracture was discovered, respondent Gerlinger failed to treat the injury or give him pain medication. Consequently, petitioner complained to the governor and high officials in the Department of Corrections and, on September 14, 2005, respondent Gerlinger succumbed to the pressure and prescribed pain medication for petitioner and arranged for him to see an orthopedic specialist for treatment of his wrist. Petitioner seeks money damages from respondents for the “permanent injury to, and scarring of, his wrist, bone disfigurement and constant pain.” He does not contend that any one of the respondents is presently denying him medical care for his wrist injury.

Likewise, petitioner alleges that in June 2005, he discovered he was bleeding from his

rectum. When he went to the Health Service Unit, respondent Ericson examined him from a distance of approximately four to five feet and told petitioner he was okay but that she would give her progress notes to the doctor, who would decide whether petitioner needed treatment. It was not until August 12, 2005 that petitioner was properly examined, evaluated diagnosed and treated with medication to relieve the pain of acute hemorrhoids. Petitioner does not contend that any one of the respondents is presently denying him medical care for his hemorrhoids.

In order to meet the imminent danger requirement of 28 U.S.C. § 1915(g), a petitioner must allege a physical injury that is imminent or occurring at the time the complaint is filed, and the threat or prison condition causing the physical injury must be real and proximate. Ciarpaglini v. Saini, slip op. 01-2657, (7th Cir. Dec. 11, 2003) (citing Lewis v. Sullivan, 279 F.3d 526, 529 (7th Cir. 2002) and Heimermann v. Litscher, 337 F.3d 781 (7th Cir. 2003)). Because no inference can be drawn from petitioner's allegations that respondents are causing him physical injury at this time by denying him medical care for his wrist injury and hemorrhoids, petitioner's complaint is not a complaint requiring application of the exception to § 1915(g).

Because petitioner is disqualified from proceeding in forma pauperis under § 1915(g), he may choose to pursue this case as a paying litigant. If so, he must submit a check or money order made payable to the clerk of court in the amount of \$250 and he must do so

no later than February 17, 2006. If he does this, however, petitioner should be aware that the court then will be required to screen his complaint under 28 U.S.C. § 1915A, and dismiss his case if the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief.

If petitioner does not pay the \$250 filing fee by February 17, 2006, I will consider that he does not want to pursue this action. In that event, the clerk of court is directed to close this file. However, even if the file is closed, petitioner will still owe the \$250 filing fee and he must pay it as soon as he has the means to do so. Newlin v. Helman, 123 F.3d 429, 436-437 (7th Cir. 1997). From petitioner's trust fund account statement, it is clear that he does not presently have the means to pay the full fee from his regular prison account. Therefore, unless he is successful in obtaining the money from some other source, I will be required to advise the warden of the Stanley Correctional Institution of petitioner's obligation to pay the fee so that if and when funds do exist in petitioner's regular account, the fee can be collected and sent to the court in accordance with 28 U.S.C. § 1915(b)(2).

Petitioner appears to believe that this court can order that the fee be paid from his release account. Unfortunately for plaintiff, Wisconsin state law restricts use of an inmate's release account funds for any purpose prior to the inmate's release. Wis. Stat. § 814.29(1m)(d); Wis. Admin. Code § DOC 309.466(s). Although the state of Wisconsin has

taken the position that the 1996 Prison Litigation Reform Act supersedes this state law for the purpose of making an initial partial payment of a federal court filing fee, nothing in the act requires a warden to agree to give a prisoner release account funds to pay the remainder of the fee simply because the prisoner wants the bill paid from his release account.

### ORDER

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

Further, IT IS ORDERED that petitioner may have until February 17, 2006, in which to submit a check or money order made payable to the clerk of court in the amount of \$250. If, by February 17, 2006, petitioner fails to pay the fee, the clerk of court is directed to close this file. Whatever the scenario, the clerk of court is directed to insure that petitioner's obligation to pay the fee has been noted in the court's financial records.

Entered this 26th day of January, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge