

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

ANDREW MATTHEW OBRIECHT,

Petitioner,

v.

LARRY JENKINS, Warden,
Kettle Moraine Correctional Institution,

Respondent.

ORDER

06-C-0253-C

Before the court is petitioner Andrew Obrieht's application for leave to proceed *in forma pauperis* on appeal from this court's judgment denying his petition for a writ of habeas corpus. (Although petitioner filed his application on December 4, 2006, consideration has been stayed pending petitioner's submission of a current, six-month trust account statement. Petitioner has now submitted that statement.) Before I may grant petitioner's application, I must find that he is indigent for the purpose of filing an appeal. In addition, I must find that petitioner is taking his appeal in good faith. 28 U.S.C. § 1915(a)(3).

Starting with the second issue, to find that an appeal is in good faith, a court need find only that a reasonable person could suppose the appeal has some merit. Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000). In an order entered December 20, 2006, I concluded that petitioner was entitled to a certificate of appealability on his claim that he received ineffective assistance of counsel at his post-revocation sentencing hearing, finding

that the claim adequately stated a constitutional violation and that jurists of reason could debate this court's procedural ruling on the claim. For these same reasons, I find that a reasonable person could suppose petitioner's appeal has some merit. Therefore, it is taken in good faith.

Turning to the question whether petitioner is indigent for the purpose of this appeal, petitioner's most recent trust account statement shows that he has average monthly deposits in the amount of \$363.93 and an average monthly balance of \$1,308.94. (Although the trust account statement shows that the average monthly balance is \$1,808.94, it appears that that amount includes the \$500 in petitioner's release account. Because petitioner does not have access to the funds in his release account, I have deducted that amount when determining petitioner's average monthly balance.) Applying the formula this court uses in determining whether a prisoner is indigent for the purpose of paying a filing fee, I conclude that petitioner lacks the financial ability to prepay the entire \$455 appellate filing fee. However, he does have the ability to prepay \$261.78, or 20 percent of his average monthly balance. Accordingly, I will grant his application for leave to proceed *in forma pauperis* on the condition that he prepay \$261.78.

Petitioner argues that he should not have to prepay even this amount, asserting that he owes his mother \$13,250 for money she paid to retain lawyers on petitioner's behalf. In addition, petitioner says that he needs all the money currently in his account (\$678) to cover the costs of litigating several cases he has pending in various state and federal courts.

Neither of these arguments convince me to waive the requirement that petitioner pay a partial filing fee. From petitioner's current trust account statement as well as the statement from the period December 2004 to June 2005, I see no evidence that petitioner has made any attempt to repay the amounts he claims to owe his mother. As for his predicted litigation expenses, petitioner must make choices when he litigates, just as any other litigant does. He has chosen to appeal the disposition of this petition and must pay the cost of doing so.

ORDER

IT IS ORDERED that the petition of Andrew Obrieht for leave to proceed *in forma pauperis* on appeal is GRANTED on the condition that he prepay the amount of \$261.78. Petitioner has until January 25, 2007 to pay this amount. If he fails to submit the partial filing fee by January 25, 2007, his appeal may be dismissed for failure to prosecute it.

Entered this 4th day of January, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge