

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

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TERRELL BROWN,

Petitioner,

v.

RICHARD MARTINEZ,

Respondent.  
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ORDER

07-C-175-C

This petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 was dismissed on April 2, 2007, for lack of jurisdiction. Specifically, I found that because petitioner is challenging the validity of his conviction and sentence in the District Court for the Northern District of Indiana, this court lacks jurisdiction to entertain his claims under § 2241. His sole remedy is a motion pursuant to 28 U.S.C. § 2255 filed in the sentencing court. Now petitioner has filed a notice of appeal and a request for leave to proceed in forma pauperis on appeal. The request will be denied because I must certify that petitioner's appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3).

Petitioner does not assert that this court erred in interpreting the allegations of his petition as challenging the validity of his conviction. Rather, he appears to want an opinion

from the court of appeals holding that it was error for this court to refuse to consider his challenges despite the lack of jurisdiction to do so. Although I understand petitioner's frustration at being jurisdictionally barred from raising his challenges here, particularly in view of the fact that he already has been unsuccessful in obtaining a favorable ruling on his § 2255 motion in the sentencing court, he cannot succeed on his claim on appeal that this court should have exercised jurisdiction over his § 2255 claim. Therefore, his request for leave to proceed in forma pauperis on appeal will be denied.

If petitioner intends to challenge this court's certification that his appeal is not taken in good faith, he has 30 days from the date he receives this order in which to file with the court of appeals a motion for leave to proceed in forma pauperis on appeal. His motion must be accompanied by a copy of the affidavit prescribed in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

One final matter requires attention. At the time he filed his petition in this court, petitioner arranged with a friend to pay the \$5 filing fee. Subsequently, the Bureau of Prisons sent the court a second \$5 payment from petitioner's trust fund account. The 1996 Prison Litigation Reform Act does not apply to actions brought under 28 U.S.C. §§ 2241 or 2255. Therefore, this court is not authorized to utilize the partial payment mechanism in 28 U.S.C. § 1915 to collect the \$455 fee for filing an appeal. Nevertheless, a litigant's responsibility to pay the docketing fee for an appeal occurs the moment the appeal is filed.

Although I have denied petitioner's request for leave to proceed in forma pauperis on appeal, he still owes the fee. "All § 1915 has ever done is excuse *prepayment* of the docket fees; a litigant remains liable for them, and for other costs, although poverty may make collection impossible." Abdul-Wadood v. Nathan, 91 F.3d 1023, 1025 (7th Cir. 1996). In this case, petitioner's second \$5 payment will be applied toward his debt for filing his appeal. There is no basis on which to reimburse it.

#### ORDER

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

Entered this 20th day of April, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge