

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

MICHAEL HILL,

Petitioner,

v.

UNITED STATES OF AMERICA,
FEDERAL BUREAU OF PRISONS,

Respondents.

ORDER

07-C-286-C

Petitioner Michael Hill, a prisoner at the Federal Correctional Institution in Oxford, Wisconsin, has submitted a proposed civil action under the Federal Tort Claims Act. He requests leave to proceed in forma pauperis. I have examined a certified copy of petitioner's trust fund account statement and reviewed this court's own financial records. I conclude that because petitioner is not paying the debt he incurred under the 1996 Prison Litigation Reform Act in connection with another lawsuit he filed in this district, he is not entitled to proceed in forma pauperis in this action.

Specifically, I find that on January 19, 2006, petitioner filed an appeal in Hill v. Thalacker, 04-C-732-C, a civil action brought pursuant to Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971). (Petitioner paid the \$150 fee for filing his

complaint in case no. 04-C-732-C, so he is not in arrears on that account.) At the time he filed his appeal, the filing fee was \$255. Petitioner paid an initial partial payment of that amount totaling \$45.46 on February 23, 2006. However, to present, he has not paid any portion of the \$209.54 he still owes.

28 U.S.C. § 1915(b)(2) provides that

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

In Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), the Court of Appeals for the Seventh Circuit cautioned prisoner litigants to keep a watchful eye on their accounts and insure that amounts owed under the Prisoner Litigation Reform Act are withdrawn on a monthly basis. "If in a given month the prison fails to make the required distribution from the trust account, the prisoner should notice this and refrain from spending funds on personal items until they can be applied properly." Id. at 776. Nonpayment of obligations a prisoner incurs under the Prisoner Litigation Reform Act for any reason other than destitution is to be understood as a voluntary relinquishment of the prisoner's right to file future suits in forma pauperis, just as if the prisoner had a history of frivolous litigation. Thurman v. Gramley, 97 F.3d 185, 188 (7th Cir. 1996).

Petitioner is not destitute. In support of his request for leave to proceed in forma

pauperis in this action, he has submitted a copy of his trust fund account statement for the period beginning February 27, 2007 and ending May 20, 2007. Although the statement covers only a three-month period instead of the six-month period required by § 1915, it is enough to show that petitioner has been receiving regular deposits into his account at least since March 2, 2007 (and I suspect considerably longer). This means that since at least April, petitioner has owed twenty percent of the preceding month's deposits in his account to pay off the debt he incurred when he filed his appeal in case no. 04-C-732-C.

From the trust fund account statement petitioner submitted with his complaint in this case, it is possible to tell that during the months of March, April and May, 2007, deposits totaling \$84.56, \$50.04, and \$350 respectively were made to petitioner's account. Thus, for the months of April and May, petitioner should have paid \$16.91 and \$10 respectively toward his debt in this court and, for the month of June, he will owe at least \$70, increased by 20% of whatever additional deposits he will have to his account in May. It is not possible to determine the exact amount petitioner should have paid toward his debt in the months between February 2006 and February 2007, because this court does not have an accounting of petitioner's monthly deposits for that period. That job belongs to petitioner and prison officials at the Oxford institution. Hall v. Stone, 170 F.3d 706 (7th Cir. 1999) (order under 28 U.S.C. § 1915(b) directs warden as trustee of account to disburse amounts owed in accordance with statutory directive). Therefore the warden of the Oxford

Correctional Institution or his or her designee will have to figure the amount petitioner owes from late February 2006 through February 2007. If petitioner's \$209.54 balance would have been paid off if petitioner had made the monthly payments § 1915(b) requires, he will have to pay this amount in full and notify the court when he has done so. As soon as this court is notified that petitioner's payments for the appellate filing fee in case no. 04-C-732-C is up to date, petitioner may renew his request for leave to proceed in forma pauperis in this case. However, he should take note that he will have to support his request for leave to proceed in this case with a certified trust fund account statement for the full six-month period immediately preceding the filing of his renewed request.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis is DENIED.

FURTHER, IT IS ORDERED that until petitioner has paid the amounts he is in arrears under § 1915(b)(2) in case no. 04-C-732-C, he may not apply for leave to proceed in forma pauperis in any future action in this district except under the circumstances permitted under 28 U.S.C. § 1915(g).

Finally, IT IS ORDERED that the warden of the Federal Correctional Institution in Oxford, Wisconsin is to notify this court when petitioner's debt in case no. 04-C-732-C

becomes current.

Entered this 24th day of May, 2007.

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