

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

JOSEPH R. REDMON,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS
and HARLEY LAPPIN, Director,

Defendants.

ORDER

07-cv-432-jcs

As directed in this court's order of February 5, 2008, plaintiff Joseph Redmon has submitted a certified copy of his trust fund account statement so that I may determine whether he is indigent for the purpose of proceeding on appeal in forma pauperis. (In the February 5 order, I found that plaintiff's appeal is not taken in bad faith and that he is not barred by the three strikes provision of 28 U.S.C. § 1915(g) from proceeding with his appeal in forma pauperis.)

Plaintiff's recent trust fund account statement reveals that he has been receiving periodic income to his inmate account; it reveals also that he has not been paying the debts he incurred under the 1996 Prison Litigation Reform Act in connection with this lawsuit and

another lawsuit he filed in this district, Redmon v. Lappin, 06-C-460-S. In this case, plaintiff paid an initial partial payment of the \$350 filing fee in the amount of \$49.64 on August 23, 2007. In case no. 06-C-460-S, plaintiff paid an initial partial payment of the \$350 filing fee in the amount of \$33.13 on September 14, 2006. He has made no other payments.

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” If the prisoner then files additional complaints or appeals, the amount owed increases as well. Newlin v. Helman, 123 F.3d 429, 436 (7th Cir. 1997), rev'd on other grounds by Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000) and Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000). This court’s records confirm that plaintiff did not pay 20% of his income toward his debt in case no. 06-C-460-S up to the date he filed this case, or 40% of his income toward his debt in case no. 06-C-460-S and this case thereafter.

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to keep a watchful eye on their accounts and insure that amounts owed under the Prisoner Litigation Reform Act are withdrawn on a monthly basis.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).

I am able to determine part of the amount plaintiff is in arrears from the trust fund account statements he filed in this case, both at its start and now in connection with his appeal. From those statements, it is clear that plaintiff is in arrears in the amount of at least \$540.69 and likely much more than that. I have calculated the \$540.69 deficit in the following manner.

Amount in arrears in Redmon v. Lappin, 06-C-460-S

The trust fund account statement plaintiff supplied at the time he filed the complaint in this case is dated August 1, 2007. (For the purpose of clarity, I will call this trust fund account statement, statement #1.) Statement #1 shows that between February 1 and August 1, 2007, plaintiff received deposits to his account totaling \$1,489.05. Plaintiff should have been paying 20% of that amount, or \$297.81, toward his debt in case no. 06-C-460-S.

Amount in arrears in Redmon v. Federal Bureau of Prisons, 07-cv-432-jcs

When plaintiff filed his complaint and asked for leave to proceed in forma pauperis in this case, a review of his financial history at that time would have revealed that he had not been paying 20% of his income toward his debt in case no. 06-C-460-S. Unfortunately, this step was overlooked and plaintiff was granted leave to proceed in forma pauperis in an order dated August 27, 2007. This oversight may make it more difficult for plaintiff to figure out how much he owes to bring his account up-to-date, but ultimately, it was plaintiff's responsibility to know that he was not paying his debt and to take steps to cure the problem.

The trust fund account statement plaintiff provided in support of his request for leave to proceed in forma pauperis on appeal does not cover a full six-month period. It begins November 28, 2007 and ends February 9, 2008. (I will call this trust fund account statement, statement #2.) This statement shows that plaintiff received deposits totaling \$350 in December 2007 and deposits totaling \$257.20 in January 2008. Plaintiff owed 40% of these deposits to pay his debts in this case and case no. 06-C-460-S. Forty percent of \$350 is \$140, and 40% of \$257.20 is \$102.88, for a total of \$242.88.

Summary

It is not possible to determine the exact amount plaintiff should have paid toward his two debts, because plaintiff's statements do not show his income between September 2006, when he paid his initial partial payment in case no. 06-C-460-S, and February 2007, when Statement #1 begins or between August 2007 when Statement #1 ends and November 2007, when Statement #2 begins. It will be up to plaintiff to obtain statements for those periods from the institutions in which he was confined so that he can determine the precise amount he is in arrears. (When he filed his complaint in this case, plaintiff was confined at the Federal Prison Camp in Oxford, Wisconsin. He is now confined at the Federal Prison Camp in Florence, Colorado.) Plaintiff will then have to pay this amount before he can seek pauper status on appeal in this case or request leave to proceed in forma pauperis with any new civil action. To prove that he has paid the amount he is in arrears, plaintiff will have to supply 1) copies of his trust fund account statements for the missing periods; and 2) a check for the full amount he is in arrears. Specifically, plaintiff will need to provide the following:

- A trust fund account statement for the period beginning approximately September 1, 2007 and ending approximately February 1, 2007, and payment for 20% of his income for this period.
- A trust fund account statement for the period beginning approximately August 1,

2007 and ending approximately December 1, 2007, and payment for 40% of his income for this period.

- A trust fund account statement for the period beginning February 9, 2008 and ending as close as possible to the date that he submits the required statements and payment.

The payment for this period will be for 40% of plaintiff's income.

Plaintiff may include the payments for these three periods and the \$540.69 payment for the amount I was able to determine he is in arrears in a single check made payable to the clerk of court.

Because I am denying his request for leave to proceed in forma pauperis on appeal for his failure to pay his debts in this court, plaintiff cannot proceed with his appeal unless the court of appeals gives him permission to do so. Pursuant to Fed. R. App. P. 24, plaintiff 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.

ORDER

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

Further, IT IS ORDERED that until plaintiff has paid the amounts he is in arrears under § 1915(b)(2) in this case and in Redmon v. Lappin, 06-C-460-S, he may not apply for leave to proceed in forma pauperis in any future action in this court except under the circumstances permitted under 28 U.S.C. § 1915(g).

Entered this 19th day of March, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge