

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

CHRIS J. JACOBS, III,

Plaintiff,

v.

PRISON RECORD DEPT.,

Defendant.

ORDER

10-cv-140-bbc

Plaintiff Chris J. Jacobs III, a prisoner at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, sought an injunction giving him access to presentence investigation reports used in a prior state criminal case. In a May 7, 2010 order, I denied plaintiff leave to proceed because there is no federal right of access to the state records at issue, dismissed the case and assessed him a strike under 28 U.S.C. § 1915(g). Plaintiff filed two motions for reconsideration, which I denied. Now plaintiff has filed a document titled “Motion for In Forma Pauperis and to Certify Appeal in Good Faith.” I will construe this document as a notice of appeal from the May 7, 2010 order.

A district court has authority to deny a request for leave to proceed in forma pauperis on appeal under 28 U.S.C. § 1915 for one or more of the following reasons: the litigant

wishing to take an appeal has not established indigence; the appeal is taken in bad faith; or the litigant is a prisoner and has three strikes. § 1915(a)(1), (3) and (g). Sperow v. Melvin, 153 F.3d 780, 781 (7th Cir. 1998). Plaintiff's request for leave to proceed in forma pauperis on appeal will be denied because I am certifying that his appeal is not taken in good faith.

In Lucien v. Roegner, 682 F.2d 625, 626 (7th Cir. 1982), the court of appeals instructed district courts to find bad faith in cases in which a plaintiff is appealing the same claims the court found to be without legal merit. Lee v. Clinton, 209 F.3d 1025, 1027 (7th Cir. 2000). Plaintiff is trying to appeal the same issues that I have found to be without legal merit. Because there is no legally meritorious basis for plaintiff's appeal, I must certify that the appeal is not taken in good faith.

Because I am certifying plaintiff's appeal as not having been taken in good faith, he cannot proceed with his appeal without prepaying the \$455 filing fee unless the court of appeals gives him permission to do so. Under 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. With his motion, he must include an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), with a statement of issues he intends to argue on appeal. Also, he must send along a copy of this order. Plaintiff should be aware that he must file these documents in addition to the notice of appeal he has already filed.

If plaintiff does not file a motion requesting review of this order, the court of appeals may choose not to address the denial of leave to proceed in forma pauperis on appeal. Instead, it may require plaintiff to pay the entire \$455 filing fee before it considers his appeal. If plaintiff does not pay the fee within the deadline set, it is possible that the court of appeals will dismiss the appeal.

ORDER

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

Entered this 10th day of August, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge