

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

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ARMANDO P. RODRIGUEZ,

Petitioner,

v.

JUDY SMITH, Warden  
Oshkosh Correctional Institution,

Respondent.

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ORDER

10-cv-355-bbc

Petitioner Armando R. Rodriguez, a prisoner at the Oshkosh Correctional Institution, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He requests leave to proceed in forma pauperis. Petitioner has supported his request with an affidavit of indigency and a six-month trust account statement from the institution.

In determining whether to allow a prisoner to proceed in forma pauperis, this court uses the following formula. First, the court determines petitioner's average monthly deposits and his average monthly balances for the six-month period mentioned above. If 20% of the greater of these two figures is \$5 or more, the petitioner is not eligible for indigent status and will have to prepay all of the \$5 filing fee. If 20% of the greater of these two figures is less than \$5, he will be required to prepay whatever portion less than \$5 has been calculated.

Applying this formula to petitioner, I find that he is able to pay the filing fee. According to the trust account statement, in the past six months petitioner's monthly

deposits have averaged \$55.01. Twenty percent of this figure is \$11.00. Accordingly, I will deny petitioner's application for leave to proceed in forma pauperis. To proceed further on his habeas petition, petitioner must pay the \$5 filing fee. If he fails to pay the fee by July 20, 2010, his petition will be dismissed for his failure to prosecute it.

#### ORDER

IT IS ORDERED that the petition of Armando P. Rodriguez for leave to proceed in forma pauperis is DENIED. Petitioner has until July 20, 2010 in which to pay the \$5 filing fee. If he fails to submit the fee by July 20, 2010, his petition will be dismissed for failure to prosecute it.

Entered this 30<sup>th</sup> day of June, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge