

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

EDWARD D. ANDERSON,

Petitioner,

v.

LIZZIE TEGELS, Warden,
New Lisbon Correctional Institution,

Respondent.

ORDER

11-cv-584-wmc
Appeal no. 14-3126

On August 12, 2014, this court denied the petition for a writ of habeas corpus filed by state inmate Edward D. Anderson. Anderson has filed a notice of appeal. On October 28, 2014, the court granted Anderson leave to proceed *in forma pauperis* on that appeal and also ordered Anderson to make an initial, partial payment of the appellate docketing fee in the amount of \$134.10 on or before November 19, 2014. (Dkt. # 37). To date, Anderson has not complied with that order. Instead, Anderson has filed a motion for a court order to use funds from his inmate release account to make the initial partial payment as directed. Anderson's request will be granted.

In his pending motion, Anderson indicates that he is unable to comply with the court's October 28 order because currently he has no funds in his inmate trust account. Prison officials reportedly advised Anderson to seek a court order allowing him to use release account funds to make this payment.

Funds in a Wisconsin inmate's release account are typically reserved for use upon his release from imprisonment. This court has taken the position that prison officials are required to use a prisoner's release account to satisfy an initial partial fee payment if he has insufficient funds in his inmate trust account. *See Carter v. Bennett*, 399 F. Supp. 2d 936, 936-

37 (W.D. Wis. 2005). Therefore, if sufficient funds do not exist in Anderson's regular account to pay his initial partial payment, he should be allowed to use his release account to pay some or all of the assessed amount. This does not mean that Anderson is free to ask prison officials to pay *all* of his appellate filing fee from his release account. *See Carter*, 399 F. Supp. 2d at 937. The only amount that Anderson must pay at this time is the \$134.10 initial partial payment toward the appellate docketing fee. Prison officials are directed to deduct that amount from Anderson's release account for purposes of making the \$134.10 initial partial appellate fee payment only if he has insufficient funds in his regular inmate trust fund account. Anderson should show a copy of this order to prison officials to insure they are aware that they should send his initial partial appeal payment to this court.

ORDER

IT IS ORDERED that:

1. Plaintiff Edward D. Anderson's motion to use release account funds to pay his initial partial appellate fee payment (dkt. # 38) is GRANTED.
2. If funds are not available from Anderson's regular inmate trust fund account, prison officials are directed to deduct \$134.10 from Anderson's inmate release account for the purpose of paying his initial partial appellate fee payment as provided herein. That amount must be submitted to this court within thirty days from the date of this order.

Entered this 18th day of November, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge