

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

ROBERT TARPLEY,

ORDER

Petitioner,

12-cv-118-bbc

v.

ROBERT WERLINGER, Warden,
FCI Oxford, Wisconsin,

Respondent.

On June 12, 2012, I ordered petitioner Robert Tarpley to pay \$24.55 as a partial payment of the \$455 fee for filing his appeal. Instead of submitting his initial partial fee, petitioner has submitted a motion for reconsideration of the June 12 order. He contends that he should be allowed to proceed in forma pauperis without paying an initial partial filing fee pursuant to Fed. R. App. P. Rule 24(a)(3).

Unfortunately, petitioner is mistaken. Although petitioner's appeal is not subject to the 1996 Prison Litigation Reform Act, because it is an appeal from a request for collateral relief under 28 U.S.C. § 2241, Walker v. O'Brien, 216 F.3d 626, 628-629 (7th Cir. 2000) ("the PLRA does not apply to any requests for collateral relief under 28 U.S.C. §§ 2241, 2254, or 2255"), in determining whether a habeas corpus petitioner is eligible for pauper status, the court applies the formula set out in 28 U.S.C. § 1915(b)(1).

The court of appeals has held that even in cases in which the PLRA did not apply, a

litigant has a legal responsibility to pay the filing and docketing fees to the extent feasible. Longbehn v. United States, 169 F.3d 1082 (7th Cir. 1999). Further, the court has said that “putting 20% of one’s available balance (or average monthly income) towards this legal obligation is not an undue burden on filing a suit or taking an appeal.” Id.

The trust fund account statement petitioner submitted after filing his notice of appeal shows that in the six-month period immediately preceding the filing of his appeal he had received deposits into his account. Therefore, petitioner’s request to waive the \$24.55 partial filing fee is denied. However, I will give him additional time until July 31, 2012 to submit his initial partial payment. Petitioner should show a copy of this order to institution officials to insure that they are aware they should send petitioner’s initial partial appeal filing fee to this court.

ORDER

IT IS ORDERED that petitioner’s motion for reconsideration of the June 12, 2012 order, dkt. #22, is DENIED.

Further, IT IS ORDERED that petitioner may have until July 31, 2012, in which to pay his initial partial payment for filing his appeal.

Entered this 6th day of July, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge