

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

ERIC T. ALSTON,

Petitioner,

v.

JUDY SMITH,
Warden, Oshkosh Correctional Institution,

Respondent.

ORDER

15-cv-325-bbc
Appeal no. 16-1308

On February 2, 2016, I denied petitioner Eric T. Alston's petition for a writ of habeas corpus under 28 U.S.C. § 2254 and determined that he was entitled to a certificate of appealability on his claim that the administrative law judge who presided at his probation revocation hearing was biased. Judgment was entered the same day. Now before the court is petitioner's notice of appeal along with his request for leave to proceed in forma pauperis on appeal.

Petitioner's appeal is not subject to the 1996 Prison Litigation Reform Act. 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"). Nevertheless, in determining whether a petitioner is eligible for indigent status on appeal under 28 U.S.C. § 1915, the court must find both that the petitioner does not have the means to pay the \$505

fee for filing his appeal and that the appeal is taken in good faith. 28 U.S.C. § 1915(a)(1) and (3). I do not intend to certify that petitioner's appeal is not taken in good faith.

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). Specifically, from the petitioner's trust fund account statement for the six-month period immediately preceding the filing of his appeal, I add the deposits made to petitioner's account and calculate 20% of the greater of the average monthly deposits or the average monthly balance in the account. If the 20% figure is more than the fee petitioner owes for filing his appeal, he may not proceed in forma pauperis. If the 20% figure is less than \$505, he must prepay whatever portion of the fee the calculation yields.

From petitioner's trust fund account statement, I conclude that he qualifies for indigent status. Further, I assess petitioner an initial partial payment of the \$505 fee for filing his appeal in the amount of \$6.90.

If petitioner does not have the money to make the initial partial appeal payment in his regular account, he will have to arrange with prison authorities to pay some or all of the assessment from his release account. The only amount petitioner must pay at this time is the \$6.90 initial partial appeal payment. Before prison officials take any portion of that amount from petitioner's release account, they may first take from petitioner's regular account whatever amount up to the full amount petitioner owes. Petitioner should show a copy of this order to prison officials to insure that they are aware they should send petitioner's initial partial appeal payment to this court.

ORDER

IT IS ORDERED that Petitioner Eric T. Alston's request for leave to proceed in forma pauperis on appeal, dkt. #29, is GRANTED. Petitioner may have until March 11, 2016, in which to submit a check or money order made payable to the clerk of court in the amount of \$6.90. If, by March 11, 2016, petitioner fails to pay the initial partial payment or explain his failure to do so, then I will advise the court of appeals of his noncompliance in paying the assessment so that it may take whatever steps it deems appropriate with respect to this appeal.

Further, the clerk of court is requested to insure that the court's financial records reflect petitioner's obligation to pay the \$6.90 initial partial payment and the remainder of the \$505 fee.

Entered this 19th day of February, 2016.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge