

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

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LENROY BROWN,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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ORDER  
99-C-400-C

On August 21, 2000, judgment was entered in this case granting defendant's motion for summary judgment and closing the case. Subsequently, plaintiff filed a notice of appeal. Because the notice was not accompanied by the \$105 fee for filing an appeal, I construed it to include a request for leave to proceed on appeal in forma pauperis pursuant to 28 U.S.C. § 1915.

Plaintiff is a prisoner at the Federal Correctional Institution in Pekin, Illinois, and subject to the 1996 Prison Litigation Reform Act. Before he may proceed in forma pauperis on appeal, the court must find that he is indigent, that he does not have "three strikes" under 28 U.S.C. § 1915(g), and that his appeal is not taken in bad faith. In an order entered on August 31,

2000, I concluded that plaintiff's appeal was not taken in bad faith and that he was not barred by the three-strike provision of § 1915(g) from proceeding with his appeal. However, because plaintiff had not submitted a trust fund account statement as required by 28 U.S.C. § 1915(a)(2)), I could not determine whether he qualifies for indigent status and, if he does, calculate the amount of his initial partial payment as § 1915(b)(1) requires. (For the purpose of paying a \$105 filing fee, plaintiff would not qualify for indigent status if I were to find that 20% of the average monthly balance in plaintiff's account or 20% of the average monthly deposits made to the account exceeds \$105.) Therefore, I directed plaintiff to submit, no later than September 29, 2000, a certified copy of his trust fund account statement for the period beginning approximately February 21, 2000 to approximately August 21, 2000. I advised him that if he failed to submit the statement by September 29 or show cause for his failure to do so, then I would deny his request for leave to proceed in forma pauperis on appeal on the ground that he has failed to show that he is entitled to indigent status.

Plaintiff has not filed a trust fund account statement or written to explain his failure to do so. Perhaps he is no longer interested in prosecuting his appeal. However, unfortunately for plaintiff, his lack of interest in pursuing his appeal does not excuse him from paying the fee for filing his appeal. He assumed that debt at the time he filed his notice of appeal, Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997). Therefore, whether or not he wishes to prosecute

his appeal, he will have to submit a trust fund account statement so that I can determine whether he owes the full fee immediately or whether it is to be taken from his account in monthly installments pursuant to 28 U.S.C. § 1915(b)(2).

Accordingly, IT IS ORDERED that plaintiff's request for leave to proceed in forma pauperis on appeal is DENIED for plaintiff's failure to show that he is entitled to indigent status. Furthermore, IT IS ORDERED that plaintiff is to submit, no later than October 25, 2000, a copy of his trust fund account statement for the period beginning approximately February 21, 2000 and ending approximately August 21, 2000 so that I may determine the manner in which he is to pay the fee for filing his appeal. Through a copy of this order to the warden of Pekin Correctional Institution, I am requesting as a courtesy only, that he insure that plaintiff's trust fund account statement is sent to the court within the time allowed.

Entered this 6th day of October, 2000.

BY THE COURT:

BARBARA B. CRABB  
District Judge