

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

ORDER

Petitioner,

99-C-572-C

v.

JERRY T. O'BRIEN,

Respondent.

In an order dated February 25, 2000, I denied petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2241. Judgment was entered on February 28, 2000. On March 8, 2000, petitioner filed a motion to reconsider the dismissal of his petition, which I construed as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e). I denied petitioner's Rule 59 motion on July 10, 2000. Now petitioner has filed a timely notice of appeal. See Fed. R. App. P. 4(a)(1)(B) and (4)(A)(iv). Because he has not paid the \$105 fee for filing his appeal, I construe petitioner's notice to include a request for leave to proceed on appeal in forma pauperis.

Petitions for writs of habeas corpus such as this one brought pursuant to 28

U.S.C. § 2241 and raising issues related to the petitioner's underlying criminal judgment or sentence are not civil actions subject to the 1996 Prison Litigation Reform Act. Walker v. O'Brien, 216 F.3d 626, 632 (7th Cir. 2000). Nevertheless, because petitioner paid the \$5 fee for filing his petition, I cannot grant his request for leave to proceed in forma pauperis on appeal unless I first determine that he qualifies for indigent status. Therefore, it will be necessary for him to submit a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal, that is, for the period beginning approximately March 6, 2000 and ending September 6, 2000..

When I determine whether petitioner is indigent for the purpose of filing his appeal, I will calculate petitioner's average monthly deposits and his average monthly balances for the six-month period immediately preceding the filing of his notice of appeal. If 20% of the greater of these two figures is \$105 or more, he will not be eligible for indigent status and will have to prepay all of the \$105 fee for filing his appeal. If 20% of the greater of these two figures is less than \$105, he will be required to prepay whatever portion less than \$105 has been calculated.

Now that petitioner is aware of the formula this court will use in determining whether he is indigent for the purpose of paying the appellate filing fee, he may be able to figure easily whether he qualifies. If he knows that he will not qualify for indigent status, he may elect to

submit a check or money order made payable to the clerk of court in the amount of \$105 in lieu of the six-month statement requested above. In any event, petitioner should act quickly. If, by October 11, 2000, petitioner does not submit either the \$105 payment or a trust fund account statement for the six-month period noted above, I will deny his request for leave to proceed in forma pauperis on appeal for his failure to show that he qualifies for indigent status.

Entered this 12th day of September, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge