

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

ORDER

v.

02-C-459-C

JEFFREY FRIDAY, Officer 2 at Waupun
Correctional Institution; STEVEN HOUSER,
captain at Waupun Correctional Institution;
WILLIAM SCHULTZ, Financial Specialist 2
at Waupun Correctional Institution.

Defendants.

Judgment was entered in this case on March 9, 2004, following a jury trial and verdict in defendants' favor. On March 11, 2004, plaintiff filed a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59, together with a motion for preparation of a trial transcript at government expense pursuant to 28 U.S.C. §753(f). I denied plaintiff's Rule 59 motion on March 16, 2004. In a separate order dated March 29, 2004, I stayed a decision on plaintiff's request for preparation of a trial transcript pending plaintiff's filing of a notice of appeal. Now plaintiff has filed a notice of appeal and a request for leave to proceed in forma pauperis on appeal. Also, he has filed a document titled "Plaintiff's Notice and Motion to Have Clerk Add Additional Items to Appellate Record."

Plaintiff's request for leave to proceed in forma pauperis on appeal is governed by the 1996 Prison Litigation Reform Act. That means this court must determine whether plaintiff's request must be denied either because he has three strikes against him under 28 U.S.C. § 1915(g), because the appeal is not taken in good faith, or because he is not financially eligible for pauper status. Plaintiff does not have three strikes against him, and I do not intend to certify that his appeal is not taken in good faith. Moreover, from plaintiff's trust fund account statement, I conclude that he qualifies for indigent status and that he presently has no means with which to pay an initial partial payment of the \$255 fee for filing his appeal. Nevertheless, plaintiff should be aware that he is obligated to pay the \$255 filing fee, even if he does not presently have funds with which to do so. His account will be monitored and the fee must be taken in monthly installments when the funds exist.

With respect to plaintiff's motion for preparation of a trial transcript, I noted in the March 29 order that if plaintiff intended to raise on appeal the same issues he raised in his Rule 59 motion, I would certify that the appeal is not frivolous but presents a substantial question. This certification is necessary for plaintiff to be eligible for a trial transcript at government expense. Plaintiff has submitted a statement of the issues he intends to raise on appeal which reflects that he intends to raise on appeal a number of issues, including the same issues he raised in his Rule 59 motion. Therefore, his motion for preparation of a trial transcript at government expense will be granted.

Plaintiff's motion to ". . . Add Additional Items to the Appellate Record" will be

denied as unnecessary. All of the documents plaintiff lists in this motion are already included in the record on appeal.

ORDER

IT IS ORDERED that

1. Plaintiff's request for leave to proceed in forma pauperis on appeal is GRANTED.
2. I certify that plaintiff's appeal is not frivolous but presents a substantial question.
3. The stay is LIFTED on plaintiff's motion for preparation of a trial transcript at government expense pursuant to 28 U.S.C. § 753(f) and that motion is GRANTED.
4. A transcript of the proceedings in the trial of this case is to be prepared and furnished to the plaintiff, with the fees therefor to be paid by the United States, pursuant to 28 U.S.C. §753(f).¹
5. Plaintiff's "Notice and Motion to Have Clerk Add Additional Items to Appellate

¹Opening and closing statements, and the jury selection process are not ordinarily included as a part of the trial transcript unless the appellant makes a showing that these aspects of the trial are subject to legally meritorious attack on appeal. Plaintiff has made no such showing in this case. Nor will the trial transcript include jury instructions, since a printed copy of the instructions already exist in the court's record.

Record” is DENIED as unnecessary.

Entered this 19th day of April, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge