

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

LEONARD LAMONT JONES,

Petitioner,

v.

KENNETH FARMER and
KEVIN LINSMEIER,

Respondents.

ORDER

00-C-515-C

Petitioner has moved for leave to proceed in forma pauperis on appeal from the judgment entered on October 19, 2000 and this court's order of November 17, 2000, denying his motion to alter or amend the judgment pursuant to Fed. R. Civ. Pro. 59. He has not filed a notice of appeal, however. Therefore, I understand his request for leave to proceed in forma pauperis as a conditional request as discussed by the Court of Appeals for the Seventh Circuit in Newlin v. Helman, 123 F.3d 429, 432-33 (7th Cir. 1997). Specifically, I understand petitioner will file a notice of appeal, and thus incur the financial obligations required under the 1995 Prison Litigation Reform Act, only if his request for leave to proceed in forma pauperis is granted. This strategy is a risky one to take. The deadline for filing a notice of appeal is 30

days from the date of entry of the judgment or 30 days from the date a decision on a Rule 59 motion is rendered. Fed. R. App. Pro. 4. A petitioner choosing this route may well miss his chance to file a notice of appeal unless the district court decides his in forma pauperis request swiftly. In this case, petitioner's deadline for filing a notice of appeal is December 17, 2000. There is time for petitioner to file his notice should he choose to do so after receiving a decision on his request for leave to proceed on appeal in forma pauperis.

In determining whether petitioner may proceed in forma pauperis on appeal, I must find that petitioner qualifies financially for indigent status and that he has not incurred three strikes under 28 U.S.C. § 1915(g). In addition, I must consider whether petitioner's appeal is taken in bad faith. 28 U.S.C. § 1915(a)(3). If it is, petitioner may not proceed in forma pauperis on appeal.

Petitioner's request for leave to proceed in forma pauperis was denied with respect to the claims raised in his complaint because I found those claims to be legally frivolous. In Lucien v. Roegner, 682 F.2d 625, 626 (7th Cir. 1982), the court of appeals held that a district court is to find bad faith if it determines that a petitioner is appealing the same claims the court had found to be without legal merit in its order denying leave to proceed in forma pauperis. This standard for finding bad faith was altered temporarily in Newlin v. Helman, 123 F.3d at 429, but has since been reinstated. See Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000).

Because I have already determined the claims raised in petitioner's complaint to be legally frivolous, I also must certify that petitioner's appeal is not taken in good faith.

ORDER

Petitioner's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that petitioner's appeal is not taken in good faith.

Entered this 7th day of December, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge