

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

---

SOUVANNASENG BORIBOUNE,

Petitioner,

v.

ORDER

03-C-0050-C

JON LITSCHER, CINDY O'DONNELL,  
SANDRA HAUTAMAKI, WARDEN GERALD  
BERGE, I.C.I. DEPT., KELLY COON, ELLEN  
RAY, C.O. McCLIMANS, RON EDWARDS,  
MS. HARPER, TIM HAINES, Security Director  
BOUGHTON, CAPT. BLACKBOURN, C.O.  
BARR, SGT. BRUDUS, SGT. PATTON,  
JOHN RAY, PETER HUIBREGTSE, LT. BIGGAR,  
SGT. SICKINGER, and TOM GOZINSKI,

Respondents.

---

Judgment was entered in this case on February 25, 2003, denying petitioner Souvannaseng Boriboune's request for leave to proceed in forma pauperis on his claim that respondents violated his constitutional rights by (1) prohibiting him from communicating on the telephone in Lao without approval from his social worker; and (2) refusing to allow him to call witnesses at his disciplinary hearings and by failing to provide him with evidence. Now petitioner has filed a notice of appeal. Because the notice is not accompanied by 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.

Like petitioner's request for leave to proceed in forma pauperis on his complaint, petitioner's request for leave to proceed in forma pauperis on appeal is governed by the 1996 Prison Litigation Reform Act. This means that this court must determine first whether petitioner's request must be denied either because he has three strikes against him under 28 U.S.C. § 1915(g) or because the appeal is not taken in good faith. Petitioner does not have three strikes against him, and I do not intend to certify that his appeal is not taken in good faith.

The only other hurdle to petitioner's proceeding with his appeal in forma pauperis is the requirement that he be found indigent and, if he is indigent, that he pay an initial partial payment of the filing fee that has been calculated from a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. 28 U.S.C. § 1915(a)(2). Petitioner has not submitted the necessary trust fund account statement, but the trust fund account statement he submitted with his complaint is sufficiently recent that I will use it to calculate petitioner's initial partial payment on the \$105 fee for filing his appeal. From the trust fund statement, I calculate petitioner's initial partial payment to be \$2.66.

ORDER

IT IS ORDERED that petitioner Souvannaseng Boriboune's request for leave to proceed in forma pauperis on appeal is GRANTED. Petitioner may have until April 3, 2003, in which to submit a check or money order made payable to the clerk of court in the amount of \$2.66. If, by April 3, 2003, petitioner fails to pay the initial partial payment or explain his failure to do so, 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.

Entered this 19th day of March, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge