

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

TYLON C. CHRISTIAN,

Plaintiff,

v.

ORDER

DOUGLAS TIMMERMAN and
KATHERINE DAYTON,

03-C-688-C

Defendants.

Before the court is plaintiff's motion for access to funds in his prison release account. *See* Dkt. 41. Plaintiff wants to use money from his release account to pay fees demanded of him by the Department of Corrections (DOC) to retrieve and process his "T-Files" for use in this lawsuit. Because this court has no authority to order the state to release these funds to plaintiff, I am denying the motion, although I am tossing plaintiff a short lifeline.

In a June 20, 2005 order (Dkt. 24), I addressed plaintiff's cavil that defendants had not made relevant files and documents sufficiently available to him. At that time, it appeared that DOC was willing to ensconce plaintiff in a room with his T-Files for free but require him to pay 15¢ per page to photocopy these records. *See Id.*, at 2.

Now it appears that plaintiff's T-Files are stored off-site at the Department of Administration's State Records Center in Madison (SRC).¹ SRC charges other departments such as DOC a \$20.00 "search fee" and a \$2.20 "retrieval fee," plus postage costs; DOC

¹ The authorizing statutes are Wis. Stat. § 16.62(1)(b) & (2)

estimates postage costs will be \$5.44 per file and plaintiff has requested three files. Depending on whether SRC charges one retrieval fee per request or one for each file, then SRC will be demanding prepayment from DOC of between \$32.52 - \$42.92 for providing plaintiff's T-Files. Pursuant to Wis. Stat. § 19.35(3)(f), agencies may require prepayment by a requester of any fee exceeding \$5.00, so DOC in turn is demanding that plaintiff prepay it for these costs. Apparently plaintiff does not have this money available except in his release account which, by regulation, cannot be used for this purpose. See Wis. Admin. Code § DOC 309.466(2).²

If plaintiff's T-Files still were in the custody of DOC then I would order defendants to make them available for free inspection by plaintiff. But DOC sent the files to SRC, which has statutory authority to require prepayment for their retrieval and dissemination. Because DOC must pay to retrieve the T-Files for plaintiff to review, DOC is entitled to pass to plaintiff its actual cost of retrieval. See *Lindell v. McCallum*, 352 F.3d 1107, 1111 (7th Cir. 2003)(pro se prisoner litigants have no constitutional entitlement to a subsidy to prosecute civil lawsuits).

Here is plaintiff's short lifeline: If DOC sent plaintiff's T-Files to SRC after plaintiff filed this lawsuit on December 22, 2003, then I will require DOC to absorb the costs of retrieving the T-Files. Even assuming that any such post-filing transfer was undertaken with

² There is one exception based on Wisconsin's Prisoner Litigation Reform Act, which authorizes DOC to deduct filing fees from release accounts. See *Spence v. Cooke*, 222 Wis. 2d 530, 537 (Ct. App. 1998).

a pure heart, I will hold DOC responsible for the costs of retrieval because it changed the status quo after plaintiff had raised his challenge. If, however, DOC transferred plaintiff's T-Files to SRC before plaintiff filed this lawsuit, then plaintiff will have to cough up the retrieval costs from some source other than his release account. If he has no other source of funds, then he may be out of luck.

Therefore, it is ORDERED that:

- (1) Plaintiff's motion to access his prison release account is DENIED;
- (2) Defendants forthwith shall determine the date on which DOC transferred plaintiff's T-Files to the State Records Center; if this occurred after December 22, 2003, then defendants must bear the cost of retrieval.

Entered this 14th day of October, 2005.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge