

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

MIGUEL GARCIA,

Petitioner,

v.

R.L. STIFF,

Respondent.

ORDER

03-C-0081-C

Petitioner Miguel Garcia's petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 was dismissed on February 25, 2003, for lack of jurisdiction. Specifically, I found that because petitioner is challenging the validity of his conviction and sentence imposed in another federal district court, this court lacks jurisdiction to entertain his claims under § 2241. His sole remedy is a motion pursuant to 28 U.S.C. § 2255 filed in the sentencing court. Now petitioner has filed a notice of appeal and requests leave to proceed in forma pauperis on appeal.

Petitioner's appeal is not subject to the 1996 Prison Litigation Reform Act. See Walker v. O'Brien, 216 F.3d 626, 628-629 (7th Cir. 2000) ("the PLRA does not apply to any requests for collateral relief under 28 U.S.C. §§ 2241, 2254, or 2255"). Nevertheless,

in determining whether a petitioner is eligible for indigent status on appeal under § 1915, the court must find both that the petitioner does not have the means to pay the \$105 fee for filing his appeal and that the appeal is taken in good faith. See 28 U.S.C. § 1915(a)(1) and (3). I do not intend to certify that petitioner's appeal is not taken in good faith.

From the trust fund account statement petitioner has submitted in support of his request for permission to file his appeal in forma pauperis, I find that he has the means to prepay a portion of the fee for filing his appeal and qualifies for indigent status with respect to the remainder of the fee.

In determining whether a habeas corpus petitioner is eligible for pauper status, it is my practice to apply the formula set out in 28 U.S.C. § 1915(b)(1). Specifically, from the petitioner's trust fund account statement for the six-month period immediately preceding the filing of his appeal, I add the deposits made to petitioner's account and calculate 20% of the greater of the average monthly deposits or the average monthly balance in the account. If the 20% figure is more than the fee petitioner owes for filing his appeal, he may not proceed in forma pauperis. If the 20% figure is less than \$105, he must prepay whatever portion of the fee the calculation yields. In this case, 20% of the average monthly balance in petitioner's account is \$34.79 (\$173.93 multiplied by 20%), and this amount is greater than 20% of the average monthly deposits made to petitioner's account.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on appeal is GRANTED, except that petitioner must prepay \$34.79 of the \$105 filing fee. If, by March 31, 2003, petitioner fails to submit a check or money order made payable to the clerk of court in the amount of \$34.79 as prepayment of a portion of the fee for filing his appeal, I will notify the court of appeals of that fact so that it may take whatever action is appropriate with respect to petitioner's appeal.

Entered this 11th day of March, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge