

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

LAPONZO M. DALLAS,

Petitioner,

v.

RYAN BARTOW, Warden,
HSU STAFF JOHN DOES and
U.W. HOSPITAL JOHN DOES,

Respondents.

MEMORANDUM

04-C-374-C

Petitioner Laponzo Dallas, a prisoner, has filed a notice of appeal from this court's determination that he may not proceed in forma pauperis in this case because he is barred by the "three-strike" provision of 28 U.S.C. § 1915(g) from utilizing the in forma pauperis statute. However, I cannot consider whether he may appeal in forma pauperis because his papers must be returned to him unfiled.

After Dallas appealed another case filed in this court, Dallas v. Gamble, 00-C-87-C, the Court of Appeals for the Seventh Circuit upheld this court's decision to deny petitioner leave to proceed in forma pauperis because he had "struck out" under the three-strike provision, 28 U.S.C. § 1915(g), and ruled that Dallas should not have attempted to file his

appeal in forma pauperis after having been told that he did not qualify for indigent status. Noting that Dallas had not paid the \$150 filing fee for case no. 00-C-87-C or the \$105 fee for filing his appeal, the court of appeals directed district courts in the circuit to “return, unfiled, any papers [petitioner] tenders in any civil litigation (other than a collateral attack on a criminal conviction)” until he has paid the full \$255 owed in that case. The court’s records reflect that petitioner has paid \$105 toward his \$225 obligation, but that he still owes a \$150 balance. This action is not a collateral attack on petitioner’s underlying criminal conviction. It is a challenge to the conditions of his confinement. Therefore, until petitioner pays the rest of what he owes in case no. 00-C-87-C, this appeal cannot be filed. Indeed, his lawsuit should not have been filed. Although it is too late to rectify that mistake, it is not too late to enforce the court of appeals’ order with respect to petitioner’s appeal.

Accordingly, because petitioner LaPonzo M. Dallas has failed to pay the full amount owed in case no. 00-C-87-C, I am returning his appeal to him as directed by the Court of Appeals for the Seventh Circuit.

Entered this 29th day of June, 2004.

BY THE COURT:
BARBARA B. CRABB
District Judge