

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

WADE WHEAT,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-413-C

In an order dated June 25, 2004, I stayed a decision whether to issue an order to show cause in this action pending a determination by the Court of Appeals for the Seventh Circuit of the appeal in White v. Scibana, No. 04-2410. I inadvertently failed to note that petitioner had not paid the \$5 fee for filing his petition and that he was seeking leave to proceed in forma pauperis. Petitioner supports his request for leave to proceed in forma pauperis with an affidavit of indigency and a copy of his trust fund account statement for the six-month period immediately preceding the filing of his petition.

In determining whether a petitioner is indigent for the purpose of filing a § 2241 petition, this court calculates the average monthly deposits and the average monthly balances

in the petitioner's prison account for the six-month period mentioned above. If 20% of the greater of these two figures is \$5 or more, then the petitioner is not eligible for indigent status and must prepay all of the \$5 filing fee. If 20% of the greater of these two figures is less than \$5, the petitioner must prepay whatever portion of \$5 the 20% calculation works out to be.

Petitioner's trust fund account statement reveals that he has had deposits totaling \$152.37 to his prison account over the last six-month period, for an average monthly deposit of \$25.39. It is unnecessary to calculate petitioner's monthly balances for the same six-month period. Regardless which amount is greater, he does not qualify for indigent status. Twenty percent of \$25.39 is \$5.07, which is more than the \$5 filing fee.

Accordingly, IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis in this case is DENIED. Petitioner may have until July 23, 2004, in which to submit a check or money order made payable to the clerk of court in the amount of \$5 to cover the fee for filing his petition. If, by July 23, 2004, petitioner fails to pay the fee or show cause why he is unable to do so, then the clerk of court will be directed to close this

file for petitioner's failure to prosecute.

Entered this 7th day of July, 2004.

BY THE COURT:
BARBARA B. CRABB
District Judge