

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

DONALD LEE PIPPIN, JR.,

Petitioner,

v.

ORDER

04-C-582-C

MATTHEW FRANK, Sec. of WI DOC;
STEVE CASPERSON, DAI Admin.;
JUDY P. SMITH - Warden of Oshkosh
Correctional Institution;
JIM SCHWOCHERT, Security Director
at OSCI; and JAMES A. ZANON,
Program Supervisor at OSCI; TIM PIERCE,
ICE at OSCI; JENNIFER DELVAUX,
ICE at OSCI; LAWERNCE STAHOWIAK,
Registrar at OSCI; RUTH TRITT, Mail
Room Supervisor at OSCI; ALI FONTANA,
Center Director at OSCI; BROOKS FELDMANN,
Center Director at OSCI; ELIZABETH YOST,
Librarian/Notary at OSCI; TOM EDWARDS,
HSU Director at OSCI; DR. ROMAN KAPLAN,
Medical Doctor at OSCI; DR. ALEXANDER STOLARSKI,
Chief Psychologist at OSCI; JULIE (?), Main Kitchen
Supervisor at OSCI; CAPT. MATT JONES, Security/
Segregation at OSCI; CAPT. DERRINGER, 1st Shift
Security at OSCI; CAPT. SCHROEDER, 2nd Shift
Security at OSCI; LT. BUECHEL (?-sp), 1st Shift
Security at OSCI (accomp. Dr. A.S. on 4/20/04);
LT. KEN KELLER, Security/Segregation at OSCI;
LT. LINGER, 1st Shift Security at OSCI; LT. ROBERT
BLECHL, 2nd Shift Security at OSCI (now Capt. and

1st Shift); LT. SCHNEIDER, 2nd Shift Security at OSCI; LT. BLOTCHER (?sp), 2nd Shift Security at OSCI (Female Lt. involved on 11/15/03); SGT. KOONEN, 1st Shift Sgt. P-Bldg. at OSCI; SGT. MONROE, 1st Shift Sgt. Seg. at OSCI; SGT. RASMUSON, 2nd Shift Sgt. P-Bldg. at OSCI; SGT. GILBERTSON, 3rd Shift Sgt. P-Bldg. at OSCI; CO PLATZ, 3rd Shift P-Bldg. at OSCI; CO S. DOMAN, 2nd Shift Utility at OSCI; CO RADKE, 3rd Shift Seg. at OSCI; CO SMITH, 3rd Shift Seg. at OSCI; CO WERNER, 1st Shift Seg./Hearing Transport Officer at OSCI; CO JENSEN, 1st Shift P-Bldg. (now U-Bldg) at OSCI; and CO CAROL COOK, Seg. Property Officer/Mail at OSCI;

Respondents.

In July 2004, Donald Lee Pippin, Jr. and another prisoner, Shannon Charles Steindorf, filed this civil action challenging various conditions of their confinement. I dismissed the case on January 23, 2004, without prejudice to each petitioner's refiling the claims in his own separate lawsuit. Petitioners appealed that decision and, on January 28, 2005, the Court of Appeals for the Seventh Circuit vacated this court's order and remanded the case for further proceedings in light of Boriboune v. Berge, 391 F.3d 852 (7th Cir. 2004). On March 30, 2005, I dismissed petitioner Steindorf from the action for his failure to show that he is entitled to indigent status under 28 U.S.C. § 1915. As to petitioner Pippin I stated,

Because Pippin has been released from prison, it is not feasible to require him to submit a trust fund account statement to prove his indigency. Nevertheless, he cannot proceed in this action unless he obtains permission to proceed in forma pauperis or pays the full filing fee, which was \$150 at the time he filed this complaint.

I then directed Pippin to submit, no later than April 13, 2005, either the \$150 filing fee or an affidavit of indigency showing his entitlement to indigent status. Petitioner filed an affidavit of indigency on April 11, 2005.

Unfortunately, in taking this course of action, I inadvertently overlooked Robbins v. Switzer, 104 F.3d 895, 897 (7th Cir. 1997), in which the Court of Appeals for the Seventh Circuit held that if an individual is a prisoner at the time he files his complaint (or an appeal), he must make an initial partial payment of the filing fee even if he has been released from prison. The initial partial payment is to be calculated from a trust fund account statement for the six-month period immediately preceding the filing of the petitioner's complaint, as required under § 1915(b)(1). Id. at 897.

Petitioner Pippin submitted a trust fund account statement at the time he filed his complaint. From that statement, I calculate petitioner's initial partial payment to be \$10.97. He must pay this amount before I will screen his complaint on its merits. Petitioner's showing of poverty in the affidavit of indigency he submitted in response to this court's March 30 order is insufficient to excuse him from paying the initial partial payment. Id. at 898. However, it is sufficient to allow a finding that petitioner may defer payment of

the remainder of the fee under § 1915(b)(4) until he is able to pay it. Id.

ORDER

IT IS ORDERED that petitioner Donald Lee Pippin is assessed \$10.97 as an initial partial payment of the \$150 fee for filing this case. He is to submit a check or money order made payable to the clerk of court in the amount of \$10.97 on or before May 2, 2005. If, by May 2, 2005, petitioner fails to make the initial partial payment or show cause for his failure to do so, he will be held to have withdrawn this action voluntarily. In that event, the clerk of court is directed to close this file without prejudice to petitioner's filing his case at a later date.

Entered this 18th day of April, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge