

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

EDWIN F. CLAY,

Petitioner,

ORDER

04-C-631-C

v.

JOSEPH SCIBANA, Warden,
Federal Correctional Institution,
Oxford, Wisconsin,

Respondent.

In an order entered in this case on September, 1, 2004, I denied petitioner's request for leave to proceed in forma pauperis in this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, because he does not qualify financially for pauper status. I gave petitioner until September 18, 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. Subsequently, petitioner requested and received an extension of time to September 30, 2004, in which to pay the filing fee. Now, a John K. Gammell, an inmate at the Federal Correctional Institution at Oxford, Wisconsin, has filed a document titled "Motion for Leave to Appear as Amicus Curiae" in this case. The motion will be denied.

The decision whether to grant an application to intervene as amicus curiae lies wholly within the discretion of the court. Clark v. Sandusky, 205 F.2d 915 (7th Cir. 1953). Ordinarily, amicus curiae briefs that duplicate arguments made in the litigants' briefs are not allowed. Ryan v. Commodity Futures Trading Com'n, 125 F.3d 1062 (7th Cir. 1997). An amicus brief is appropriate only when 1) a party is not represented competently or is not represented at all; 2) the amicus has an interest in some other lawsuit that may be affected by a decision in the present case; or 3) the amicus has unique information or a perspective that can help the court beyond the help that the lawyer for the respondent or the petitioner is able to provide. Id.

Mr. Gammell does not contend that he has an interest in another lawsuit that may be affected by a decision in this case. Nor does he contend that petitioner Clay is not competent to represent himself in this action. Instead, he appears to rely solely on his status as a “pro bono inmate legal aid who conducts extensive research and educates pro se litigants at FCI Oxford on post conviction remedies, institution administrative remedies, and the Mandatory Victim Restitution Act,” to convince the court that he is uniquely positioned to argue petitioner’s claim in this habeas corpus action that FCI-Oxford has been “setting the amount and payment schedules for restitution” in violation of the laws of the United States.

First, I note that petitioner has not yet paid the fee for filing his petition. Therefore, the court has not reviewed the merits of the petition to determine whether petitioner’s claim

is one properly raised in a petition for a writ of habeas corpus brought under 28 U.S.C. § 2241. Even if this court were to decide that a § 2241 habeas corpus petition is the appropriate vehicle in which to raise the question whether the Bureau of Prisons has the legal authority to set the restitution payment schedule for petitioner, Mr. Gammell suggests no reason why he cannot assist petitioner privately to prepare his own brief on the merits of his petition.

Because Mr. Gammell has made no showing that the arguments made in his amicus brief will not duplicate the arguments made in petitioner's own brief should this court request briefing on the merits of the petition, his motion to appear as amicus curiae in this action will be denied.

ORDER

IT IS ORDERED that John K. Gammell's "Motion for Leave to Appeal as Amicus Curiae" is DENIED.

Entered this 20th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge