

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

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HARRY L. GANT,

Petitioner,

v.

JEFFREY ENDICOTT, Warden  
Redgranite Correctional Institution,

Respondent.

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ORDER

04-C-953-C

On July 1, 2005, petitioner Harry L. Gant filed a motion for an extension of time to file a notice of appeal and request for a certificate of appealability from the June 13, 2005 judgment in this case. Petitioner also requested that the filing fee for the appeal be taken out of his release account. Petitioner's request for an extension of time will be GRANTED and his request that the filing fee be taken out of his release account will be DENIED.

In order to file an appeal, petitioner need only file a document indicating that he seeks to appeal the judgment and that he is requesting the court to issue a certificate of appealability. In his document, petitioner should indicate what issues he seeks to raise on appeal, keeping in mind that this court will not issue a certificate of appealability unless "the applicant has made a substantial showing of the denial of a constitutional right." Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000); see also 28 U.S.C. § 2253(c)(2). However, it is not necessary for petitioner to cite cases or make new legal arguments in order

to prepare the notice of appeal and request for a certificate of appealability. The notice of appeal is not an opportunity for petitioner to re-argue his claims; rather, its function is merely to alert the court to the issues petitioner wants to raise on appeal and the reasons he thinks this court decided those issues wrongly.

If petitioner wants to proceed in forma pauperis on appeal, he must submit a trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal, Longbehn v. United States, 169 F.3d 1082 (7th Cir. 1999), so that the court can confirm that he is eligible for pauperis status. In determining whether a habeas corpus petitioner is eligible for pauper status, this court applies 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 \$255, he must pay whatever portion of the fee the calculation yields. He will be excused from prepaying the remainder of the fee. If petitioner does not have sufficient funds in his regular account to pay the calculated amount, he may request an enlargement of time to make the payment. This court has no authority to order prison officials to allow petitioner permission to use his release account funds to make the payment.

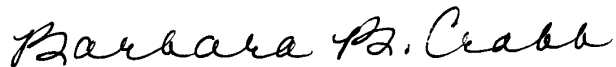
ORDER

IT IS ORDERED that petitioner's request for an extension of time to file a notice of appeal and request a certificate of appealability is GRANTED. Petitioner may have until August 1, 2005 within which to file a notice of appeal and request a certificate of appealability. If he intends to move for leave to proceed in forma pauperis, his notice should be accompanied by a trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal.

FURTHER, IT IS ORDERED that petitioner's request that the fee for filing an appeal be taken out of his release account is DENIED.

Entered this 7th day of July, 2005.

BY THE COURT:



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BARBARA B. CRABB  
District Judge