

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

ORDER

05-C-003-C

PETER HUIBREGTSE; GARY BOUGHTON;
STEVEN HOUSER; CAPTAINS STEVE
SCHUELER, THOMAS CORE, KURT LINJER,
GILBERG and GARY BLACKBOURN; C.O.
LANGE and SGT. CARPENTER,

Defendants.

In an order entered on January 6, 2006, I gave plaintiff until January 27, 2006, in which to submit a check or money order made payable to the clerk of court in the amount of \$.84 to pay the initial partial payment required by 28 U.S.C. § 1915(b)(1) for filing his appeal. I told plaintiff that if, by January 27, 2006, he failed to make the initial partial payment or explain his failure to do so, then I would advise the court of appeals of his noncompliance in paying the assessment so that it could take whatever steps it deemed appropriate with respect to plaintiff's appeal. Now plaintiff has written the court to advise that when he asked the prison financial office to remit the \$.84 payment to this court, a

financial officer in the business office refused to issue a check, responding instead that “no funds [are] available after established obligations are withheld. Contact court with explanation.” According to Lindell, 100% of his income is presently being collected in installments to pay fees he owes under the Prison Litigation Reform Act for previously filed complaints and appeals.

The court of appeals has not determined the priority to be given to a prisoner’s obligations under the Prison Litigation Reform Act under the circumstances present in this case. However, in Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1977), rev'd on other grounds by Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000), and Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000), the Court of Appeals for the Seventh Circuit noted that how much a prisoner owes, and how it will be collected, is determined entirely by [28 U.S.C. § 1915] and is outside the prisoner's (and the prison's) control once the prisoner files a complaint or notice of appeal. In Newlin, the court ruled that it was error for the district court to fail to collect an initial partial payment from an inmate who was receiving periodic income, simply because the money was spent as quickly as it was earned. In the view of the court, collection of the assessment “should have come off the top of the next deposit of prison wages” Nothing in § 1915(b)(2), the installment collection provision of the statute, contradicts this method of determining priority of payments. Indeed, § 1915(b)(2) states, “*After payment of the initial partial filing fee*, the prisoner shall be required to make monthly payments of 20

percent of the preceding month's income . . . (emphasis added).” Nothing in the statute authorizes prison officials to refuse to make an initial partial payment when the prisoner owes installment payments on several other cases or appeals. Therefore, it appears that the prison financial officer was not on firm ground when he or she denied plaintiff's request for payment of the initial partial payment ordered in this case on January 6.

Accordingly, IT IS ORDERED that the deadline within which plaintiff is to submit a check or money order made payable to the clerk of court in the amount of \$.84 is extended to February 13, 2006. In order to insure payment of the assessed amount, I am sending a copy of this order to plaintiff's warden and requesting that he take whatever steps are necessary to see to it that the initial partial payment ordered in this case is paid from the next deposit made to plaintiff's account. If, by February 13, 2006, plaintiff fails to make the initial partial payment or show cause for his failure to do so, I will advise the court of appeals of his noncompliance in paying the assessment so that it may take whatever steps

it deems appropriate with respect to this appeal.

Entered this 19th day of January, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge