

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

-----  
JONATHON M. MARK,

Plaintiff,

ORDER

v.

05-C-279-C

Off. GUSTAFSON; Sgt. McARTHER;  
Lt. DOHMS; Unit Manager DOUGHERTY;  
Mr. BROWN (head of PRC); STEPHEN  
M. PUCKETT,

Defendants.  
-----

In response to this court's order of December 1, 2006, plaintiff has supplied information concerning his custody status at the time he filed his notice of appeal in an effort to assist the court in determining whether he is subject to the 1996 Prison Litigation Reform Act with respect to his appeal. Although the documentation plaintiff submitted was insufficient to allow the court to determine his status, defendants have filled the gap. On December 20, 2006, defendants submitted the affidavit of plaintiff's parole officer, Barbara Kode-Brown, in which she avers the following:

[Plaintiff] was released from DOC custody on September 26, 2006. Upon his release, [plaintiff] moved into DOC supplemental housing because he had no

other housing option. Supplemental housing is not a half-way house or treatment facility, but is instead housing DOC rents and makes available to Probationers/Parolees who do not yet have a place to live. . . There are no on-site staff, and there is no fee charged to men who reside there. Probationers/Parolees are limited to one month stays unless they are (SBN's) special bulletin high risk sex offenders who cannot find housing in the community. Probationers/Parolees in supplemental housing are required to wear electronic monitoring bracelets, but their movement is not restricted by virtue of their being permitted to live in supplemental housing. . . On October 19, 2006, [plaintiff] moved to an apartment. His address is 17 Forest Ave., Apt. 201, Fond du Lac, WI, 54935.

Under 28 U.S.C. § 1915(h)

the term “prisoner” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

It is clear from the information offered by plaintiff's parole officer that plaintiff was not a prisoner detained in a jail or prison when he filed his notice of appeal in this case. Therefore, he is not subject to the Prison Litigation Reform Act with respect to his appeal.

Fed. R. App. P. 24(a)(3), a party who was permitted to proceed in forma pauperis in the district court action. . . may proceed on appeal in forma pauperis without further authorization” unless the district court certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis. In this court's order of November 6, 2006, I stated that I did not intend to certify that plaintiff's appeal is not taken in good faith and I know of no other reason plaintiff should not be permitted

to proceed in forma pauperis on appeal.

ORDER

IT IS ORDERED that the clerk of court modify the court's financial records to reflect that plaintiff's obligation to pay a \$70.16 initial partial payment of the \$455 fee is RESCINDED. Further, IT IS ORDERED that plaintiff may proceed in forma pauperis on appeal pursuant to Fed. R. App. P. 24(a)(3) and is not subject to the restrictions of the Prison Litigation Reform Act with respect to his appeal.

Entered this 21st day of December, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge