

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

TIMOTHY ALI, AMONTE JACKSON,
DARRELL CAMPBELL and MIGUEL
SEGARRA,

Petitioners,

v.

MILWAUKEE COUNTY JAIL, SHERIFF
DEPARTMENT, DAVID A. CLARKE, Sheriff,
KEVIN CARR, Deputy Inspector and
RICHARD R. SCHMIDT, Deputy Inspector,

Respondents.

ORDER

05-C-363-C

Darrell Campbell has written a letter postmarked November 11, 2005, which I construe as a motion for reconsideration of this court's order dated November 3, 2005, requiring him to pay pursuant to 28 U.S.C. § 1915(b)(2) the remainder of the \$250 fee he owes for joining in this group complaint. The motion will be denied.

In support of his motion, Campbell argues that when he failed to pay the initial partial payment he had been assessed, his intent was to "opt out" of the lawsuit. However, Campbell was offered a chance to opt out of this lawsuit and avoid payment of a filing fee

in this court's order of June 24, 2005. At that time, I explained to all of the group complainants the potentially harsh consequences under the Prison Litigation Reform Act of participating as a co-petitioner in a group prisoner lawsuit. I ordered that any co-petitioner wishing to remain a party to the action was to submit a trust fund account statement before July 15, 2005, and that any person not supplying a trust fund account statement would be considered to have opted out of the lawsuit. On August 1, 2005, I entered another order, dismissing the several co-petitioners who had declined to submit trust fund account statements within the time allowed. Among those individuals dismissed was Darrell Campbell.

On August 4, 2005, however, Campbell submitted a trust fund account statement, together with a letter to the court in which he stated,

I am writing to the court to let the court know I don't want to opt out. I just received my inmate account statements and I am now providing my statements to the court as order to remain a party to case No. 05-C-363-C.

Given Campbell's expressed acknowledgment of his desire to continue prosecuting this action, I assessed him an initial partial payment of the filing fee and, in an order dated August 17, 2005, gave him until September 7, 2005, in which to submit it. Although I stated in that order that I would consider Campbell to have withdrawn from the lawsuit if he failed to pay the initial partial payment he had been assessed, I did not rule that Campbell's failure to pay the assessment would eliminate the fee payment obligation he had

incurred under the Prison Litigation Reform Act when he made clear his intention to remain a party to the lawsuit. As it happened, Campbell did not pay the amount he was assessed within the time allowed in the August 17 order. However, contrary to his assertion that he intended to opt out, Campbell wrote the court a second time on September 13, 2005. In this communication, Campbell stated that he had not received the August 17 order but that he had learned from Timothy Ali, another co-petitioner, that he owed \$23.75. He then stated, "I am willing to pay the assessed \$23.75 as an initial partial payment. I move the court for an order allowing me to make my initial partial payment by September 26, 2005." Subsequently, in an order dated October 11, 2005, Magistrate Judge Stephen Crocker extended to October 11, 2005, the deadline within which Campbell was to pay the assessed amount. At no time did this court imply that Campbell's failure to pay the assessment would erase his fee payment obligation.

Because petitioner Darrell Campbell has shown no reason why he should not be required to pay the \$250 fee for filing his action in this group lawsuit, his motion for reconsideration of the November 3, 2005 order will be denied.

ORDER

IT IS ORDERED that petitioner Darrell Campbell's motion for reconsideration of

the November 3, 2005 order is DENIED.

Entered this 17th day of November, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge