

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

GLENN M. DAVIS,

Plaintiff,

ORDER

v.

05-C-374-C

JAMES E. DOYLE, Governor, State of Wisconsin;
E. MICHAEL McCANN, Milwaukee District Attorney;
ROBERT D. DONOHOO, Deputy District Attorney, Milwaukee;
MATTHEW J. FRANK, Secretary of Dept. of Corrections;
CATHERINE J. FARRY, Warden of New Lisbon Corr. Inst.;
RUDOLPH T. RANDA, Eastern District of Wisconsin Chief Judge;
TED E. WEDEMEYER, Presiding Appellate Court Judge, Milwaukee;

Defendants.

In an order entered in this case on July 5, 2005, I directed plaintiff to pay no later than August 1, 2005, an initial partial payment of the \$250 fee for filing this action in the amount of \$41.54 to the Clerk of Court for the District of Colorado, where plaintiff originally filed his action. Now plaintiff has filed a motion dated July 22, 2005, in which he asks that the initial partial payment be waived. Plaintiff explains that the only money he has is in his release account and unavailable to him.

Plaintiff is mistaken that his release account money cannot be used to pay the initial

partial payment ordered in this case. The State of Wisconsin has taken the position that under the supremacy clause of the United States Constitution, the Prisoner Litigation Reform Act supersedes any restrictions state law imposes on the availability of funds in a prisoner's release account. Therefore, if plaintiff does not have funds presently available to him in his regular account, he will have to make arrangements with Wisconsin prison authorities to pay the assessment from his release account.

IT IS ORDERED that plaintiff may have an enlargement of time to August 18, 2005, in which to pay an initial partial payment of the \$250 fee for filing this action to the Clerk of Court for the District of Colorado in the amount of \$41.54.

Further, IT IS ORDERED that plaintiff may have an enlargement of time until August 18, 2005, in which to submit proof to this court that he paid the initial partial payment as required above.

Finally, IT IS ORDERED that if, by August 18, 2005, plaintiff fails to submit proof

that he paid the required initial partial payment, I will dismiss this case without prejudice for plaintiff's failure to prosecute it.

Entered this 29th day of July, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge