

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

ROBERT E. SALLIE,

Petitioner,

ORDER

v.

05-C-40-C

MATTHEW J. FRANKS,
GERALD BERG,
DANIEL HANDS,

Respondents.

In an order dated March 10, 2005, I denied petitioner leave to proceed in forma pauperis on appeal because he has incurred three strikes under 28 U.S.C. § 1915(g) and is no longer eligible for pauper status. Now petitioner has filed a motion for an order directing Warden Phil Kingston to pay the \$255 appellate filing fee from his release account. That motion will be denied.

In drafting the 1996 Prison Litigation Reform Act, Congress did not address the question how prisoners might obtain the money to prepay filing fees when their eligibility for pauper status is barred by § 1915(g). If it had provided in the statute that such fees were to be collected from the inmate's prison account, petitioner might be able to argue that the restrictions state law imposes on the availability of funds in his release account must give

way to the federal law under the supremacy clause. In the absence of such a provision, the state has no reason not to enforce its law restricting the use of release account funds. I can conceive of no other legal basis for issuing the order petitioner seeks.

ORDER

IT IS ORDERED that petitioner's motion for an order directing Warden Phil Kingston to deduct from petitioner's release account the \$255.00 fee he owes for filing an appeal in this case is DENIED.

Entered this 29th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge