

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

LUIS VASQUEZ,

Petitioner,

v.

ORDER

05-C-528-C

MATHEW FRANK, Secretary,
PHIL KINGSTON, Warden,
GARY McCAUGHTRY, Former Warden,
MARC CLEMENTS, Security Director,
MIKE THURMER, Deputy Warden,
CYNTHIA THORPE, ORA,
CURTIS JANSSEN, HSCUM,
STEVEN SCHUELER, HSCSS,
BELINDA SCHRUBBE, HSUM,
GARY ANKARLO, PSUS,
RICHARD RAEMISCH, OOS,
SANDRA HAUTAMAKI, CCE,
JAMES MUENCHOW, ICE,
CAPT. O'DONOVAN,
JOHN McDONALD, Social Worker/Advocate, and
STANLEY TONN, ICE,

Respondents.

In an order entered in this case on September 2, 2005, I directed petitioner to submit no later than September 23, 2005, a check or money order made payable to the clerk of court in the amount of \$1.69 as his initial partial payment of the filing fee. Now petitioner

has written to say that he cannot make the payment. Petitioner says that he has \$134 in his release account but only \$.04 in his regular account. He appears to believe that he cannot use release account funds to pay his initial partial payment. He is wrong.

In another case filed in this court, Collins v. Green, 97-C-669-C (W.D. Wis. Sept. 26, 1997), I addressed the question whether release account funds should be considered for the purpose of calculating the initial partial payment or collecting the remainder of the fee owed by a prisoner subject to the Prisoner Litigation Reform Act. I looked to the language of 28 U.S.C. §§ 1915(a) and (b), the fee assessment and collection provisions of the federal statute, and concluded that Congress's reference in these provisions to a single “trust fund account” or “prisoner account” signaled no intent on the part of Congress that the district courts were to exclude from consideration sums in an inmate's release account. Subsequently, the state of Wisconsin took the position that, with respect to initial partial payments under the supremacy clause, the Prisoner Litigation Reform Act supersedes any restrictions state law imposes on the availability of funds in a prisoner's release account. Therefore, if a petitioner does not have sufficient funds in his regular account to pay the full amount of the initial partial payment assessed to him, then prison officials will draw funds first from the prisoner’s regular account and any portion of the initial partial payment remaining from the prisoner’s release account fund.

Because petitioner has made no showing that he cannot pay the initial partial payment he has been assessed, I will grant him a short extension of time to pay the

assessment.

ORDER

IT IS ORDERED that petitioner may have an enlargement of time to October 17, 2005, in which to submit a check or money order made payable to the clerk of court in the amount of \$1.69. If, by October 17, 2005, petitioner fails to pay the initial partial payment he has been assessed in this case or explain his failure to do so, then the clerk of court is directed to close this file without prejudice to petitioner's filing his case at a later date.

Entered this 26th day of September, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge