

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

JAMES A. SMITH,

Petitioner,

v.

ORDER

MATTHEW J. FRANK and the
WISCONSIN DEPARTMENT OF CORRECTIONS,

05-C-719-S

Respondents.

Petitioner requests leave to proceed in forma pauperis. Attached to his proposed complaint is an affidavit of indigency and a trust fund account.

Pursuant to 28 U.S.C. § 1915(b)(1), as amended by the Prison Litigation Reform Act, effective April 26, 1996, a prisoner bringing a civil action shall be required to pay the full amount of the \$250.00. The Court shall collect an initial partial filing fee of 20% of the greater of the average monthly deposits in the prisoner's account or the average monthly balance in the prisoner's account for the six month period immediately preceding the filing of the complaint.

According to the information that petitioner submitted, he had no income in the six month time period immediately preceding the filing of the complaint. Accordingly, petitioner does not have the means to pay an initial partial filing fee.

The Court addresses the merit of petitioner's complaint. His complaint is entitled "Petition for a Writ of Habeas Corpus on Federal Question in Complaint under the Prison Litigation Reform Act 42 U.S.C. § 1983." The allegations in his complaint do not allege any facts that support any claim under federal law. Accordingly, petitioner's complaint will be dismissed for failure to state a claim.

Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that petitioner's request to proceed in forma pauperis is GRANTED.

IT IS FURTHER ORDERED that petitioner's complaint and all claims contained therein is DISMISSED without prejudice for failure to state a claim for relief under federal law.

Entered this 12th day of December, 2005.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge