

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

JAMES R. SCHULTZ,

Petitioner,

v.

PAM WALLACE, Warden,
Stanley Correctional Institution; and
P. NICHOLS, Chippewa Valley
Treatment Facility,

Respondents.

ORDER

05-C-751-C

Petitioner James R. Schultz, a prisoner at the Stanley Correctional Institution in Stanley, Wisconsin, has filed a proposed complaint for declaratory, injunctive and monetary relief. Although he has submitted a trust fund account statement at the court's request, he notes that he does not wish to proceed in forma pauperis. Rather, he asks that this court order prison officials to pay the \$250 fee for filing this case from his release account funds. That request will be denied.

28 U.S.C. § 1915 mandates that prisoners pay the full amount of the fee for filing a civil case in federal court. The fee must be paid either in installments if the prisoner qualifies

for pauper status or in full if the prisoner does not qualify for pauper status. However, only the provision relating to initial partial payments can be understood as requiring the state under the Supremacy Clause to make an exception to its own law restricting the use of release account funds. Collins v. Green, 97-C-669-C (W.D. Wis. Sept. 26, 1997). Nothing in the remainder of that statute authorizes federal courts to direct prison officials to ignore the state's release account laws simply because the prisoner wants to use money from that account to pay the remainder of his filing fee or the full fee if he does not qualify for pauper status under § 1915(g). .

Here, petitioner is not asking to proceed under the in forma pauperis statute. This may well be because he is aware that if he requests pauper status, the request will have to be denied because he does not qualify for such status under 28 U.S.C. § 1915(g).

Section 1915(g) reads as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

On at least three prior occasions, Judge John Shabaz of this court has denied petitioner leave to proceed in forma pauperis in lawsuits that were legally frivolous. See Schultz v. Elmer, 90-C-433-S, decided June 14, 1990; Schultz v. Bablitch, 91-C-683-S, decided August 5,

1991; and Schultz v. Bablitch, 91-C-747-S, decided August 29, 1991.

Moreover, petitioner's complaint does not allege facts from which an inference may be drawn that he is under imminent danger of serious physical injury. In his complaint, petitioner challenges as unconstitutional and as violative of the Religious Land Use and Institutionalized Persons Act the institution's decision to take 50% of any money sent to him from family and friends to pay off his legal loan debts.

In order to meet the imminent danger requirement of 28 U.S.C. § 1915(g), a petitioner must allege a physical injury that is imminent or occurring at the time the complaint is filed, and the threat or prison condition causing the physical injury must be real and proximate. Ciarpaglini v. Saini, slip op. 01-2657, (7th Cir. Dec. 11, 2003) (citing Lewis v. Sullivan, 279 F.3d 526, 529 (7th Cir. 2002) and Heimermann v. Litscher, 337 F.3d 781 (7th Cir. 2003)). Claims of physical injury ordinarily arise in the context of lawsuits alleging Eighth Amendment violations. I can conceive of no factual scenario under which a petitioner would be subjected to physical injury by the denial of due process or his RLUIPA rights. Accordingly, petitioner's complaint is not a complaint requiring application of the exception to § 1915(g).

Because petitioner is disqualified from proceeding in forma pauperis under § 1915(g), he may pursue this case only as a paying litigant and his payment will have to come from some other source than his release account.

ORDER

IT IS ORDERED that petitioner's request for an order directing prison officials to allow him to pay the fee for filing this case from his release account is DENIED.

Further, IT IS ORDERED that petitioner may have until January 26, 2006, in which to submit a check or money order made payable to the clerk of court in the amount of \$250. If he does this, petitioner should be aware that the court then will be required to screen his complaint under 28 U.S.C. § 1915A, and dismiss his case if the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief.

If petitioner does not pay the \$250 filing fee by January 26, 2006, I will consider that he does not want to pursue this action. In that event, the clerk of court is directed to close this file.

Entered this 5th day of January, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge