

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

In an order entered in this case on January 5, 2006, I denied petitioner's request for leave to proceed in forma pauperis in this action after concluding that he had struck out under the three strikes provision of the 1996 Prison Litigation Reform Act, 28 U.S.C. § 1915(g). Now petitioner has filed a motion for reconsideration, which will be denied.

In support of his motion, petitioner argues that one of the cases deemed to earn him a strike, case no. 90-C-433-S, should not count toward the three-strike limit because that lawsuit was "directed to criminal matters." However, as petitioner concedes, he claimed in case no. 90-C-433-S that he had a right to obtain certain documents the Green County

Sheriff was withholding from him that he wished to use in connection with a criminal action pending against him. His action was brought as a civil action and sought relief available only in civil actions. Because the only cases exempt from consideration under § 1915(g) are habeas corpus actions, and because petitioner's case no. 90-C-433-S was not a habeas corpus action, it was not improper to consider case no. 90-C-433-S in determining petitioner's three-strike status.

Next petitioner contends that he should not be barred from proceeding in forma pauperis under § 1915(g) because two of the cases this court counted toward his three-strikes limit were cases he filed before the Prison Litigation Reform Act was enacted. Unfortunately for petitioner, this distinction is of no moment. The Court of Appeals for the Seventh Circuit already has decided that federal courts may count as strikes cases filed by prisoners before the Prison Litigation Reform Act became law. Abdul-Wadood v. Nathan, 91 F.3d 1023, 1025 (7th Cir. 1996) (application of Prisoner Litigation Reform Act and § 1915(g) not impermissibly retroactive).

Because petitioner has advanced no persuasive reason why this court should alter its January 5, 2006 decision, his motion for reconsideration will be denied.

ORDER

IT IS ORDERED that petitioner's motion for reconsideration of this court's order of

January 5, 2006, denying him leave to proceed in forma pauperis in this case is DENIED.

Entered this 26th day of January, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge