

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

KENNETH VALENTINE AWE,
Petitioner,

ORDER
06-C-34-C

v.

GRANT COUNTY JAIL SHERIFF
KEITH GOVIER; CHIEF DEPUTY
JACK JOHNSON; SUPERVISOR
JOANN KOOLLER,

Respondents.

Petitioner Kenneth Awe has been directed to pay an initial partial payment of the fee for filing this case in the amount of \$8.35 on or before March 6, 2006. The amount of the initial partial payment was calculated in accordance with the procedure mandated by Congress in 28 U.S.C. § 1915(b). Now petitioner has written to say that he has no money in his account at the present time and will be unable to make any payment to this court until he has paid the Grant County jail for medical bills he owes. He appears to be asking this court to waive payment of the initial partial payment. The request will be denied, because this court is without the authority to waive the statutory requirements governing initial

partial payments.

With respect to petitioner's contention that any money he receives will have to be paid to the Grant County jail for his medical bills, I note that the Court of Appeals for the Seventh Circuit has not determined the priority to be given to a prisoner's obligations under the Prison Litigation Reform Act under the circumstances present in this case. However, in Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1977), rev'd on other grounds by Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000), and Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000), the court of appeals noted that how much a prisoner owes, and how it will be collected, is determined entirely by 28 U.S.C. § 1915 and is outside the prisoner's (and the prison's) control once the prisoner files a complaint or notice of appeal. In Newlin, the court ruled that it was error for the district court to fail to collect an initial partial payment from an inmate who was receiving periodic income, simply because the money was directed elsewhere as quickly as it was earned. In the view of the court, collection of the assessment "should have come off the top of the next deposit of prison wages" Nothing in § 1915(b)(2), the installment collection provision of the statute, contradicts this method of determining priority of payments. Indeed, § 1915(b)(2) states, "*After payment of the initial partial filing fee*, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income . . . (emphasis added)." Nothing in the statute authorizes prison officials to refuse to make an initial partial payment because a prisoner owes

payments on other obligations. Therefore, prison officials would not be on firm footing if they were to refuse to grant petitioner's request for payment of the initial partial payment ordered in this case on the ground that petitioner owes money to the Grant County jail.

Accordingly, I will grant petitioner one last extension of time in which to pay the initial partial payment he has been assessed in this case. Before he makes the payment, petitioner should consider carefully whether a lawsuit of dubious merit such as this (petitioner's sole claim is that it is unconstitutional for prison officials to limit his outgoing mail to four pages per standard envelope, because a \$.39 stamp is sufficient to cover five pages to an envelope) is worth the \$250 he will have to pay if he pursues this action further.

ORDER

IT IS ORDERED that the deadline within which petitioner is to submit a check or money order made payable to the clerk of court in the amount of \$8.35 is extended to March 16, 2006. If, by March 16, 2006, petitioner fails to make the initial partial payment

or show cause for his failure to do so, he will be held to have withdrawn this action voluntarily. In that event, the clerk of court is directed to close this file.

Entered this 23rd day of February, 2006.

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