

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

KENNETH VALENTINE AWE,

Petitioner,

v.

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

Respondents.

ORDER

06-C-34-C

On March 3, 2006, judgment was entered in this case denying petitioner's request for leave to proceed in forma pauperis on the ground that the claim raised in his complaint was legally frivolous. Now petitioner has filed a notice of appeal.

Ordinarily, a prisoner who files a notice of appeal must send the court a trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal so that the court can calculate and assess an initial partial payment of the \$255 fee for filing the appeal. See 28 U.S.C. § 1915(a)(2). However, the partial payment provision of the in forma pauperis statute does not apply to a prisoner whose appeal is certified by the

district court as not taken in good faith. In this case, I must certify that petitioner's appeal is not taken in good faith.

The Court of Appeals for the Seventh Circuit has instructed district courts to find bad faith where a petitioner is appealing the same claims the district court found to be without legal merit in his complaint. Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000). Petitioner states that he intends to appeal this court's findings with respect to each of his claims. Because he is attempting to raise on appeal the same legally meritless claims he raised in his complaint in this court, I must certify his appeal as not being taken in good faith.

Because I am certifying petitioner's appeal as not having been taken in good faith, petitioner cannot proceed with his appeal without prepaying the \$255 filing fee unless the court of appeals gives him permission to do so. Pursuant to Fed. R. App. P. 24, petitioner has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order. Petitioner should be aware that if the court of appeals agrees with this court that the appeal is not taken in good faith, it will send him an order requiring him to pay all of the filing fee by a set deadline. If petitioner fails to pay the fee within the deadline set, the court of appeals ordinarily will dismiss the appeal and order this court to arrange for collection of the fee from petitioner's prison account.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that petitioner's appeal is not taken in good faith.

Entered this 15th day of March, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge