

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

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LEWIS ALTMAN, JR.,

Petitioner,

v.

MATTHEW J. FRANK,

Respondent.

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ORDER

06-C-100-C

On March 15, 2006, I denied petitioner Lewis Altman, Jr.'s request for leave to proceed in forma pauperis in this action because none of the allegations in his complaint stated a claim upon which relief may be granted. In addition, I recorded a strike against him as required by the 1996 Prison Litigation Reform Act. Judgment of dismissal was entered on March 16, 2006. Now petitioner has filed a notice of appeal. Because the notice is not accompanied by the \$255 fee for filing an appeal, I construe petitioner's notice as including a request for leave to proceed in forma pauperis on appeal.

Like petitioner's original action, his appeal is governed by the Prison Litigation Reform Act. This means that I must consider whether he has three strikes under 28 U.S.C. § 1915(g) and, if not, whether he is indigent and whether his appeal is taken in good faith.

Petitioner does not have three strikes and I am aware from the trust fund account statement he submitted just two months ago that he is indigent. Nevertheless, petitioner cannot proceed in forma pauperis on appeal because I must certify that his appeal is not taken in good faith.

In Hains v. Washington, 131 F.3d 1248 (1997), the court of appeals suggested that when a district court dismisses an action for failure to state a claim, it ordinarily should not find good faith for an appeal except in rare circumstances, which the district court is to articulate in allowing the appeal to go forward. This is not an exceptional case. There is no room for debate among reasonable jurists whether petitioner has a liberty interest in parole or whether a retroactive procedural change in Wisconsin's parole statutes created a significant risk of prolonging petitioner's incarceration in violation of petitioner's ex post facto rights. As I told petitioner in the order denying him leave to proceed on his complaint, the statute he relies on to support his ex post facto claim does not apply to him and the law is settled with respect to his claim under the due process clause. Therefore, I must certify petitioner's 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 3<sup>rd</sup> day of April, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge