

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

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GARY B. CAMPBELL and PERCY BROWN,

Petitioners,

v.

DAVID A. CLARKE, Sheriff, and  
RICHARD R. SCHMIDT, Deputy Inspector,  
and THE MILWAUKEE COUNTY JAIL,

Respondents.  
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ORDER

06-C-148-C

This is a group action brought by petitioners Gary Campbell and Percy Brown, who are inmates at the Milwaukee County Jail. Each petitioner has asked for leave to proceed in forma pauperis and each has submitted a copy of a trust fund account statement for the purpose of allowing the court to assess an initial partial payment of the filing fee as required by 28 U.S.C. § 1915(a)(2). Each petitioner is aware of the consequences of proceeding in a group complaint. See Campbell v. Milwaukee County Jail, 05-C-363-C (slip op. June 27, 2006) (describing application of Prison Litigation Reform Act to group complaints to Campbell, Brown and others). In particular, each is aware that he must pay the full \$250 fee for filing this case, even if his request for leave to proceed in forma pauperis is denied.

Boriboune v. Berge, 381 F.3d 852, 856 (7th Cir. 2004). Also, each knows that when I screen their complaint, if either petitioner's action is frivolous, malicious or fails to state a claim upon which relief may be granted, I will record a strike under 28 U.S.C. § 1915(g) against the petitioner who brought the action and against his co-petitioner. Finally, each is aware that he will be held legally responsible for knowing precisely what is being filed in the case on his behalf and that he will be subject to sanctions under Fed. R. Civ. P. 11 for any pleading, motion or other paper filed over his name if such sanctions are found warranted in any aspect of the case.

Although petitioners have submitted copies of their trust fund account statements, I cannot calculate petitioner Percy Brown's initial partial payment at this time because the trust fund account statement he submitted does not cover the full six-month period immediately preceding the filing of his complaint. Petitioners' complaint was submitted to the court on March 21, 2006. The trust fund account statements petitioners submitted should have covered the period beginning approximately September 15, 2005 and ending approximately March 15, 2006. Each petitioner's statement begins well before September 15, and each ends too early. Petitioner Brown's statement ends on January 17, 2006, two months short, and petitioner Campbell's statement ends on February 10, 2006, one month short.

Also, petitioner Brown has not signed the complaint, as he is required to do. Fed. R.

Civ. P. 11. Therefore, if petitioner Brown wishes to continue with this lawsuit, he will have to supplement his trust fund account statement with an additional statement covering the period beginning January 17, 2006 and ending March 15, 2006, and he will have to file a signed copy of the complaint filed in this case. (Presumably, petitioner Brown has a copy of the complaint in his possession.)

Although petitioner Campbell's trust fund account statement ends on February 10, 2006, petitioner has taped to the statement an entry made on March 17, 2006, which shows an account balance as of that date. From these two documents, it appears likely that Campbell did not receive a deposit to his account between February 10 and March 17. The balance of Campbell's account on February 10, 2006 reveals a deficit of \$27.47, and by March 17, the deficit had grown to \$36.74. Ordinarily, under this circumstance, I would find that the petitioner qualifies to proceed in forma pauperis under 28 U.S.C. § 1915(b)(4). In this case, however, I cannot allow petitioner Campbell to proceed in forma pauperis for another reason.

Campbell's trust fund account statement shows that between September 1, 2005 and October 29, 2005, when all deposits to the account appear to have ended, petitioner Campbell received regular window deposits to his account totaling \$380. However, while petitioner Campbell was receiving these deposits to his account, he did not insure that deductions were being made to pay 1) the balance of \$79.56 he owes for filing a complaint

in Campbell v. Nyklewick 05-C-481-C; 2) the balance of \$644.59 he owes for filing a complaint and two appeals in Campbell v. Johnson, 04-C-661-C; 3) the \$227.46 balance he owes for filing a complaint and appeal in Campbell v. Doll, 02-C-255-C; and 4) the \$181.93 balance he owes for filing a complaint and appeal in Campbell v. Toney, 01-C-524-C.

In Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), the Court of Appeals for the Seventh Circuit cautioned prisoner litigants to keep a watchful eye on their accounts and insure that amounts owed under the Prisoner Litigation Reform Act are withdrawn on a monthly basis. “If in a given month the prison fails to make the required distribution from the trust account, the prisoner should notice this and refrain from spending funds on personal items until they can be applied properly.” Id. at 776. According to the court of appeals, nonpayment of obligations a prisoner incurs under the Prisoner Litigation Reform Act for any reason other than destitution is to be understood as a voluntary relinquishment of the prisoner's right to file future suits in forma pauperis, just as if the prisoner had a history of frivolous litigation. Thurman v. Gramley, 97 F.3d 185, 188 (7th Cir. 1996).

Petitioner Campbell was required to pay 20% of his income for the months of September and October 2005 toward each of the six separate fees he already owes under the Prison Litigation Reform Act. This means that 100% of his income, or all \$380, should have been sent to this court to pay down his debt. Instead, petitioner's account shows he spent

his money on newspapers, telephone calls and commissary items. Therefore, until he has paid the delinquent amount, he may not proceed in forma pauperis in any action in this or any other court unless his complaint reveals that he is under imminent danger of serious physical injury. Campbell's case is not such a case. His complaint is that he is being denied access to the courts.

#### ORDER

IT IS ORDERED that

1. Petitioner Brown may have until April 20, 2006, in which to file a signed copy of the complaint in this case, and a certified copy of his trust fund account statement for the period beginning beginning January 17, 2006 and ending March 15, 2006, If, by April 20, 2006, petitioner Brown fails to submit a signed complaint and the necessary supplement to his trust fund account statement, I will assume that he wishes to withdraw this action voluntarily. In that event, the clerk of court is to close petitioner Brown's action without prejudice to his filing his case at a later date.

Further, IT IS ORDERED that petitioner Gary Campbell's request for leave to proceed in forma pauperis is DENIED. Until petitioner submits proof that he has paid the \$380 he is in arrears on his debts in case nos. 01-C-524-C, 02-C-255-C, 04-C-661-C and 05-C-481-C, he may not apply for pauper status in this court except under the circumstances

permitted under 28 U.S.C. § 1915(g). If he does, he may be subject to additional sanctions. As soon as this court is notified that petitioner's payments for the fees in his earlier cases are up to date, petitioner may renew his request for leave to proceed in forma pauperis in this case.

Entered this 31<sup>st</sup> day of March, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge