

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

Petitioner Percy Brown has advised the court that he wishes to withdraw voluntarily from this group action. Therefore, he will be dismissed from the case.

Separately, petitioner Gary Campbell has filed a motion for reconsideration of this court's order of March 31, 2006, together with a notice of appeal and a motion for leave to proceed in forma pauperis on appeal.

In this court's March 31, 2006 order, I denied Campbell leave to proceed in forma pauperis in this action because his trust fund account statement showed that he had received deposits to his prison account totaling \$380, but had not insured that the deposits were collected by the jail 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 such circumstances, this court is required to treat the petitioner as though he had struck out under 28 U.S.C. § 1915(g) until the amount he is in arrears has been paid. Thurman v. Gramley, 97 F.3d 185, 188 (7th Cir. 1996).

Petitioner Campbell complains that this ruling is “unfair” because he does not have enough money at this moment to pay the amount he is in arrears. However, he does not suggest that he was unaware of his financial obligations under the Prison Litigation Reform Act and that the money he was spending on canteen items should have been used to pay those obligations. To the contrary, this court is presently entertaining a motion for sanctions in another of petitioner’s cases, Campbell v. Nyklewick 05-C-481-C, based upon evidence revealing that Campbell may have been intentionally avoiding his obligations under the Act. In particular, evidence submitted in support of the motion reveals that petitioner may have been concealing deposits intended for his enjoyment by scheming with other inmates to have the deposits placed in their accounts. In any event, the fact that petitioner does not have enough money presently to bring his accounts up-to-date is of no moment. The law in this circuit is settled. 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.

Turning to petitioner Campbell's notice of appeal and request for leave to proceed in forma pauperis on appeal, the request will be denied for the same reason that petitioner may not proceed with his complaint in this court. He is not eligible for pauper status. However, he does owe the \$255 fee for filing a notice of appeal. (Although petitioner's notice of appeal was not received by this court until April 12, 2006, I will assume that petitioner mailed his notice on April 7, 2006, which is the date he signed the notice. Houston v. Lack, 487 U.S. 266 (1988). Therefore, petitioner will be charged the filing fee in effect at that time, which was \$255. For petitioner's information, the fee was raised to \$455 on April 9, 2006.) Jail officials will be required to monitor petitioner's account and collect monthly payments according to the formula set out in 28 U.S.C. § 1915(b)(2) if and when such funds do exist.

Within thirty days of the date he receives this order, petitioner may challenge in the court of appeals this court's decision to deny his request for leave to proceed in forma pauperis on appeal because of his ineligibility for pauper status. Fed. R. App. P. 24(a)(5).

ORDER

IT IS ORDERED that petitioner Percy D. Brown's request for voluntary dismissal of his action in this group complaint is GRANTED.

Further, IT IS ORDERED that petitioner Gary Campbell's motion for reconsideration of the order entered herein on March 31, 2006, denying him leave to proceed in forma pauperis in this action, is DENIED. The clerk of court is requested to close this case.

Finally, IT IS ORDERED that petitioner Gary Campbell's motion for leave to proceed in forma pauperis on appeal is DENIED.

Entered this 19th day of April, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge