

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

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KENNETH VALENTINE AWE,

Petitioner,

v.

GRANT COUNTY JAIL and  
GRANT COUNTY SHERIFF'S DEPARTMENT,

Respondents.  
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ORDER

06-C-162-C

Petitioner Kenneth Valentine Awe receives periodic deposits to his inmate account at the Grant County Jail in Lancaster, Wisconsin, where he is presently incarcerated. Under the 1996 Prison Litigation Reform Act and 28 U.S.C. § 1915, he is required to make an initial partial payment of the fee for filing this case unless he lacks the means to do. Petitioner does not lack means. Although he may be out of funds temporarily, he received a \$30 deposit to his account as recently as March 16, 2006. Therefore, it is too early to conclude that petitioner qualifies for waiver of the initial partial payment under 28 U.S.C. § 1915(b)(4).

Petitioner contends that any money he may receive is likely to be seized by the Grant

County jail to pay his medical and legal bills. I am aware that petitioner owes 40% of every deposit he receives to pay the remainder of the fees he owes for filing an earlier complaint in this court and an appeal in Awe v. Grant County Jail Sheriff 06-C-0034-C. However, simply because petitioner owes money to the county as well as this court does not excuse him from paying the initial partial payment he has been assessed. It is true that no court has addressed the question whether jails and prisons may ignore a petitioner's obligations under the Prison Litigation Reform Act in favor of paying down debts a prisoner owes to the county, the state, or even his victims under a restitution program. However, in Newlin v. Helman, 123 F.3d 429, 435-436 (7th Cir. 1997), 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 suggested in dicta that prison officials are required by statute to give priority to federal court filing fees. Therefore, although I am unwilling to apply the waiver provision set out in § 1915(b)(4) at this time, I will grant petitioner an enlargement of time in which to make the initial partial payment. This delay will not prejudice petitioner, as the claim he raises in his complaint requires no urgent action. His complaint is that he cannot convince the county to furnish his cell with a television set.

#### ORDER

IT IS ORDERED that petitioner may have an enlargement of time to May 22, 2006,

in which to submit a check or money order made payable to the clerk of court in the amount of \$6.21. If, by May 22, 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 without prejudice to petitioner's filing his case at a later date.

Entered this 13th day of April, 2006.

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