

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

JOEL FLAKES,
#027179
Stanley Correctional Institution,

Petitioner,

v.

DEPARTMENT OF CORRECTIONS and
CORRECTIONS CORPORATION OF AMERICA,
PAMELA WALLACE, Warden, Stanley Correctional
Institution; JEROME SWEENEY, Unit Manager;
Correctional Officer SGT. DORF; MS. PEGGY
MEYER, Education Director; MS. STACEY BIRCH,
Librarian; MR. LYNCH, ADA steering committee
member and classification specialist,

Respondents.

Petitioner Joel Flakes has filed a document titled "Reconsideration Pursuant to Federal Rule of Civil Procedure Rule 15(d)," which I construe as a motion to alter or amend the final decision entered in this case on August 15, 2006. In this court's August 15 order, I ruled that petitioner could not proceed in forma pauperis in this action because he has struck out under 28 U.S.C. § 1915(g) and because his complaint does not concern a matter

suggesting he is “under imminent danger of serious physical injury.” In support of his motion, petitioner argues that it was err for this court to count as strikes cases he filed before the Prison Litigation Reform Act was enacted in late 1995. He argues also that counting his earlier-filed actions as strikes violates his constitutional rights under the ex post facto clause. Petitioner is wrong on both counts.

In Abdul-Wadood v. Nathan, 91 F.3d 1023 (7th Cir. 1996), the Court of Appeals for the Seventh Circuit held that application of the three-strikes provision in § 1915(g) to cases filed by prisoners before the Prison Litigation Reform Act became law was not impermissibly retroactive. The court reasoned

. . . the statute does not change any of the legal consequences of deeds preceding its enactment. All § 1915 has ever done is excuse pre-payment of the docket fees; a litigant remains liable for them, and for other costs, although poverty may make collection impossible.

Subsequently, in Lewis v. Sullivan, 279 F.3d 526, 529 (7th Cir. 2002), the court of appeal stated expressly that § 1915(g) does not violate the ex post facto clause. The court reiterated:

Anyway, everyone allowed to proceed in forma pauperis owes the fees and must pay when able; the line drawn by § 1915(g) concerns only the timing of payment. Section 1915(g) does not have a substantive effect. That's why we held it applicable to cases in which the “strikes” predate the plra. See Abdul-Wadood v. Nathan, 91 F.3d 1023 (7th Cir.1996).

Because there is no legal merit to petitioner’s contentions that this court erred in assessing

strikes for cases he filed earlier than the PLRA was enacted and that application of § 1915(g) to his cases violated the ex post facto clause, petitioner's motion to alter or amend the final order in this case will be denied.

ORDER

IT IS ORDERED that petitioner's motion to alter or amend the order dismissing this case dated August 15, 2006, is DENIED.

Entered this 24th day of August, 2006.

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