

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

WARREN GAMEAL LILLY, JR.,

Petitioner,

v.

PAMELA WALLACE, Individually and as SCI Warden;
MICHAEL McNEIL, Individually and as SCI
Acting Director of Security; BECKY DRESSLER,
Individually and as SCI Director of Health
Services Unit; CAPTAIN JENSEN, Individually
and as SCI Security Staff; LIEUTENANT BRAD
LUNDMARK, Individually and as SCI Security Staff;
OFFICER P. WALTER, Individually and as SCI
Security Staff; OFFICER HAIDER, Individually
and as SCI Security Staff; OFFICER WALIA,
Individually and as SCI Security Staff; OFFICER
TEMPSKI, Individually and as SCI Security Staff;
OFFICER WILLIAMS, Individually and as SCI
Security Staff; OFFICER GRIGGS, Individually and
as SCI Security Staff; OFFICER JENKINS, Individually
and as SCI Security Staff; SERGEANT TABER,
Individually and as SCI Security Staff; SERGEANT
KACZMAREK, Individually and as SCI Security Staff;
FNP DAVID ROCK, Individually and as SCI
Medical Staff; RN DEBRA ARNEVIK, Individually
and as SCI Medical Staff; LPN BARB KRUMEANAUER,
Individually and as SCI Medical Staff; and UNNAMED
ACTORS, Individually and as SCI Staff,

Respondents.

ORDER

06-C-692-C

On December 4, 2006, I denied petitioner's request for leave to proceed in forma pauperis on all but one claim raised in this proposed civil action, because petitioner is ineligible for in forma pauperis status under 28 U.S.C. § 1915(g). The one claim appeared to fall within the exception to § 1915(g), because petitioner alleged that he was presently being denied medical care for a serious medical need. Therefore, I told petitioner that he could have until December 22, 2006, in which to file an amended complaint raising his claim concerning his medical needs. I advised petitioner that, in the alternative, he could submit a check or money order made payable to the clerk of court in the amount of \$350 and I would screen his complaint in its entirety.

Subsequently, petitioner moved for an enlargement of time in which to file a new complaint or "paperwork offering proof of only two PLRA strikes." In response to that request, I entered an order dated January 4, 2007, giving petitioner an enlargement of time in which to submit a complaint limited to his claim that he was being denied medical care for a serious medical need. In the same order, I told petitioner that I would not revise my ruling concerning his three-strike status, because under the holding of Boriboune v. Berge, 391 F.3d 852 (7th Cir. 2004)(when one petitioner's "action" in a group complaint warrants strike, all petitioners receive the strike), there was no question that he had earned two strikes in a group complaint filed in the District Court for the Eastern District of Wisconsin, Busk v. Frank, 06-C-575-CNC (E.D. Wis. Sept. 28, 2006), and that he had earned a third strike

in the Court of Appeals for the Seventh Circuit by filing a frivolous appeal in Lilly v. Torhorst, 06-C-08-C, appeal # 06-1536 decided on Apr. 20, 2006.¹ When petitioner did not amend his complaint or pay the filing fee within the extended time allowed, his case was closed on January 17, 2007.

Now petitioner has filed a notice of appeal from the dismissal of his case. Because he has not paid the \$455 fee for filing an appeal, I presume that he wishes to proceed in forma pauperis. Moreover, because he has filed no statement of the issues he intends to raise on appeal, I presume that he is challenging this court's decision to require him to file a new complaint limited to his medical care claim and the decision that he is ineligible to proceed in forma pauperis under § 1915(g) on his multi-claim complaint.

Unfortunately for petitioner, I conclude that he is no more eligible to proceed on appeal in forma pauperis than he was to proceed in forma pauperis in this court. His three-strike status bars him from taking advantage of the initial partial payment and installment provisions of 28 U.S.C. § 1915. Petitioner owes the \$455 fee in full immediately. He may delay payment for two reasons only: 1) his complete destitution; or 2) if he challenges in the court of appeals within thirty days of the date he receives this order the decision to deny his

¹Since April 26, 2006, petitioner earned yet another strike when he filed an appeal in Lilly v. Jess, 189 Fed. Appx. 542 (7th Cir. 2006), that the court of appeals dismissed as legally frivolous on July 21, 2006.

request for leave to proceed in forma pauperis on appeal because of his § 1915(g) status. Fed. R. App. P. 24(a)(5). If the court of appeals decides that it was improper to require petitioner to deny petitioner leave to proceed on appeal under the exception to § 1915(g), then the court will take remedial action. If the court of appeals determines that this court was correct in finding that § 1915(g) bars petitioner from taking his appeal in forma pauperis, the \$455 filing fee payment will be due in full immediately. Whatever the scenario, petitioner is responsible for insuring that the required sum is remitted to the court at the appropriate time.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on appeal is DENIED because three strikes have been recorded against petitioner under 28 U.S.C. § 1915(g) and petitioner has not limited his complaint so that he can qualify for the exception to § 1915(g). Further, IT IS ORDERED that the clerk of court insure that

petitioner's obligation to pay the \$455 is reflected in this court's financial records.

Entered this 9th day of February, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge