

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

WAR N. MARION,

Petitioner,

ORDER

v.

07-C-243-C

COLUMBIA CORRECTIONAL INSTITUTION,
WARDEN GREGORY GRAMS,
DEPUTY WARDEN MARC CLEMENTS,
CAPTAIN LESLY WINSLOW-STANLEY,
C.O. GREGORY GARRISON,
CAPTAIN DYLAN RADTKE,
SUPERVISOR JANEL NICHOLS,
ADVOCATE MARY PEISER,
PSYCHOLOGIST ANDREA NELSON, and
LT. KELLER,

Respondents.

In an order dated June 8, 2007, I dismissed petitioner's complaint under 28 U.S.C § 1915 because it failed to state a claim upon which relief may be granted. In particular, I concluded that there was no legal merit to petitioner's allegations that he had been denied procedural due process prior to receiving a disciplinary sanction of 240 days in segregation because his punishment did not implicate a liberty interest under the due process clause. I

denied petitioner's Rule 59 motion to alter or amend the judgment in an order dated June 18.

Now petitioner has filed a notice of appeal. The notice is not accompanied by the \$455 fee required for filing an appeal. Therefore, I construe petitioner's notice of appeal to include a motion for leave to proceed on appeal in forma pauperis.

In determining whether petitioner may appeal in forma pauperis, I must consider whether he has three strikes under 28 U.S.C. § 1915(g) and, if not, whether he is indigent and whether his appeal is taken in good faith. Petitioner has not incurred three strikes and I am aware from the trust fund account statement he submitted just two months ago that he is indigent. This leaves the question of good faith. In Hains v. Washington, 131 F.3d 1248 (7th Cir. 1997), the court of appeals suggested that when a district court dismisses an action under 28 U.S.C. § 1915A for failure to state a claim, it should not find good faith for an appeal except in rare circumstances, which the district court is to articulate in allowing the appeal to go forward. This is one of those rare circumstances.

Although the Court of Appeals for the Seventh Circuit has consistently rejected arguments that segregation time implicates a liberty interest, in each of those cases the time at issue was relatively short. Lekas v. Briley, 405 F.3d 602, 612 (7th Cir. 2005) (90 days); Hoskins v. Lenear, 395 F.3d 372, 374-75 (7th Cir. 2005) (two months); Thomas v. Ramos, 130 F.3d 754 (7th Cir.1997) (70 days); Williams v. Ramos, 71 F.3d 1246 (7th Cir. 1995)

(19 days). In this case, petitioner alleges that he spent at least 240 days in segregation, which is close to what other courts have found to be sufficient to implicate a liberty interest. E.g., Colon v. Howard, 215 F.3d 227 (2d Cir. 2000) (305 days); Williams v. Fountain, 77 F.3d 372, 374 n.3 (12 months) See also Whitford v. Boglino, 63 F.3d 527 (7th Cir. 1995) (suggesting that due process protections may be required for “extreme terms of segregation”). Thus, there is room for debate among reasonable jurists whether 240 days in disciplinary segregation is sufficient to trigger due process protections. Therefore, I do not intend to certify that petitioner’s appeal is not taken in good faith.

Nevertheless, petitioner’s appeal cannot proceed unless he first pays an initial partial payment of the \$455 filing fee. From the trust fund account statement petitioner submitted recently, I have calculated that he must make an initial partial payment in the amount of \$2.85.

ORDER

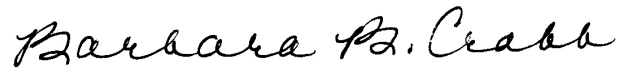
IT IS ORDERED that petitioner War N. Marion’s request for leave to proceed in forma pauperis on appeal is GRANTED. Petitioner may have until July 30, 2007, in which to submit a check or money order made payable to the clerk of court in the amount of \$2.85. If, by July 30, 2007, petitioner fails to pay the initial partial payment or explain his failure to do so, then I will advise the court of appeals of his noncompliance in paying the

assessment so that it may take whatever steps it deems appropriate with respect to this appeal.

Further, the clerk of court is requested to insure that the court's financial records reflect petitioner's obligation to pay the \$2.85 initial partial payment and the remainder of the \$455 fee in monthly installments.

Entered this 11th day of July, 2007.

BY THE COURT:

Handwritten signature of Barbara B. Crabb in cursive script.

BARBARA B. CRABB
District Judge