

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

SHAHEED TAALIB'DIN MADYUN,

Petitioner,

v.

JUDY SMITH; CO. II. LEMON; CAPT. SCHROEDER;
KENNETH KELLER; ANGIE WOOD; LT. KUSTER;
LT. SCHNEIDER; CAPT. PHILLIPS; LT. KIRBY LINGER;
CO. II CAROL COOK; PETER ERICKSON; CAPT. BRANT;
CAPT. LESATZ; WILLIAM POLLARD; DR. STEVEN
SCHMIDT; LT. LAMBRECHT; LT. SKIEWICKI;
CAPT. BRUCE MURASKI; PHIL KINGSTON;
DON STRAHOTA; CAPT. O'DONOVAN; SGT. VOSS;
SGT. LEHMAN; SIEDSCHLAG; and CAPT. WIERENGA;
(Others to be named); CO. II ERIC TAYLOR,

Respondents.

ORDER

07-C-318-C

Petitioner Shaheed Taalib'Din Madyun, a prisoner at the Waupun Correctional Institution in Waupun, Wisconsin, has filed a 144-paragraph proposed complaint for declaratory, injunctive and monetary relief. He has paid \$250 of the \$350 filing fee. If he wishes the court to consider his complaint, however, he will have to prepay the remaining \$100.

Plaintiff Madyun is listed on the Internet website for the Court of Appeals for the Seventh Circuit as a litigant who has struck out under 28 U.S.C. § 1915(g). That means that before he can bring a new action, he must pay the full amount of the filing fee unless his complaint is one alleging imminent danger of serious physical injury.

Petitioner's complaint does not allege facts from which an inference may be drawn that he is under imminent danger of serious physical injury. He contends instead that 26 individuals with more yet to be named have violated his constitutional rights over a six-year period while he was housed at three different institutions. The only injunctive relief he seeks is an order preventing his placement in a double cell because *he* might harm his cellmate. The remaining relief is for money damages for past constitutional violations or alleged continuing constitutional violations of a non-physical nature.

In order to meet the imminent danger requirement of 28 U.S.C. § 1915(g), a petitioner must allege a physical injury that is imminent or occurring at the time the complaint is filed, and the threat or prison condition causing the physical injury must be real and proximate. Ciarpaglini v. Saini, slip op. 01-2657, (7th Cir. Dec. 11, 2003) (citing Lewis v. Sullivan, 279 F.3d 526, 529 (7th Cir. 2002) and Heimermann v. Litscher, 337 F.3d 781 (7th Cir. 2003)). Because petitioner's complaint does not meet this standard, it is not a complaint requiring application of the exception to § 1915(g).

Although petitioner is disqualified from proceeding in forma pauperis under §

1915(g), he may choose to pursue this case as a paying litigant. If so, he must submit a check or money order made payable to the clerk of court in the amount of \$100 and he must do so no later than July 9, 2007. If he does this, however, petitioner should be aware that the court then will be required to screen his complaint under 28 U.S.C. § 1915A, and dismiss his case if the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief.

If, by July 9, 2007, petitioner does not submit the remaining \$100 he owes to pay in full the \$350 filing fee, I will consider that he does not want to pursue this action. In that event, the clerk of court is directed to close this file. However, even if the file is closed, petitioner will still owe the \$100 balance of the fee for filing this lawsuit and he must pay it promptly. Newlin v. Helman, 123 F.3d 429, 436-437 (7th Cir. 1997). To insure payment, I will be required to advise the warden of the Waupun Correctional Institution of petitioner's obligation so that the fee can be collected and sent to the court in accordance with 28 U.S.C. § 1915(b)(2).

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis is DENIED because petitioner is ineligible for in forma pauperis status under 28 U.S.C. §

1915(g).

Further, IT IS ORDERED that petitioner may have until July 9, 2007, in which to submit a check or money order made payable to the clerk of court in the amount of \$100. If, by July 9, 2007, petitioner fails to pay the \$100 balance of the fee for filing his complaint, the clerk of court is directed to close this file. However, even in that event, the clerk of court is to insure that petitioner's obligation to pay the balance of the fee for filing this case is reflected in this court's financial records and that the warden of the Waupun Correctional Institution is advised of petitioner's debt so that it may be collected and sent to this court.

Entered this 18th day of June, 2007.

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