

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

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RONALD WILLIAMS,

Petitioner,

ORDER

v.

07-C-487-C

BILL JONES and  
THE UNITED STATES OF AMERICA,

Respondents.  
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Petitioner Ronald Williams, a prisoner at Oxford Correctional Institution in Oxford, Wisconsin, has submitted a proposed complaint. He requests leave to proceed in forma pauperis, as authorized by 28 U.S.C. § 1915. I will deny petitioner's request because he has failed to sufficiently make payments on the debts he incurred in Williams v. Case, 06-C-599-C. I cannot consider his request for leave to proceed in forma pauperis with his present complaint until he has paid the amount he is in arrears.

28 U.S.C. § 1915(b)(2) provides that "after payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account . . . ." If the prisoner then files additional

complaints or appeals, the amount owed increases as well. For example, when petitioner filed his complaint in case number 06-C-599-C and paid the initial partial payment, he owed 20 percent of his monthly income to pay the \$350 filing fee. One month later, when petitioner filed an appeal from the order denying his request for leave to proceed in forma pauperis, he owed 40 percent of his monthly income to pay both the \$350 fee for filing his complaint and the \$455 fee for filing his appeal. See Newlin v. Helman, 123 F.3d 429, 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) (fees for filing more than one lawsuit or appeal accumulate). The trust fund account statement petitioner submitted in this case reveals he has not been paying in the manner described above.

The Court of Appeals for the Seventh Circuit in Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998) cautioned prisoner litigants to keep a watchful eye on their accounts and insure that amounts owed under the Prisoner Litigation Reform Act are withdrawn on a monthly basis. “If in a given month the prison fails to make the required distribution from the trust account, the prisoner should notice this and refrain from spending funds on personal items until they can be applied properly.” Id. at 776. Nonpayment of obligations a prisoner incurs under the Prisoner Litigation Reform Act for any reason other than destitution is to be understood as a voluntary relinquishment of the prisoner's right to proceed in forma pauperis in future suits or appeals, just as if the prisoner had a history of frivolous litigation.

Thurman v. Gramley, 97 F.3d 185, 188 (7th Cir. 1996). Pursuant to 1915(g), once a third strike is recorded against an inmate, he may not seek pauper status in any future civil action or appeal “unless [he] is under imminent danger of serious physical injury.” Petitioner’s complaint makes no such claim and will not qualify for the imminent danger exception.

Upon receipt of petitioner’s complaint in Williams v. Case, 06-C-599-C on October 23, 2006, I assessed an initial partial filing fee of \$4.85. Petitioner paid the initial partial filing fee on November 8, 2006. For the purposes of determining what petitioner owed, this court considers a complaint to be “filed” on the day it receives the prisoner’s initial partial payment, signifying his intention to proceed with his lawsuit. On December 6, 2006 petitioner appealed the judgment entered in 06-C-599-C. An appeal is considered “filed” on the day the court receives the prisoner’s notice of appeal. Therefore, 20 percent of petitioner’s total income in the month of November 2006 should have been paid to the court in December 2006 and 40 percent of his total income should have been paid to the court every month thereafter.

Petitioner’s trust fund account statement in this case, 07-C-487-C, begins March 9, 2007 and ends August 16, 2007. It shows that he has been paying this court considerably less than 40 percent of his monthly income. The chart below illustrates the calculation performed by the court in reviewing petitioner’s financial statement. The first column shows the month in which petitioner received income; the second column shows the amount of his

monthly income; the third column shows the amount petitioner owed, which is 40 percent of his monthly income; the fourth column shows the amount of petitioner's monthly payments; and the last column shows the minimum amount I am able to determine petitioner still owes to the court.

Month	Income	Amount Owed (40% of income)	Amount Paid	Amount Still Due
March	\$20	\$8	\$2	\$6
April	\$49.04	\$19.62	\$7	\$12.62
May	\$27.08	\$10.83	\$2	\$8.83
June	\$28.46	\$11.38	\$2	\$9.38
July	\$30.50	\$12.20	\$5	\$7.20
<b>TOTAL</b>	<b>\$155.08</b>	<b>\$62.03</b>	<b>\$18</b>	<b>\$44.03</b>

It is not possible to determine the exact amount petitioner must pay in order to bring his account up-to-date. That job belongs to petitioner and prison officials at the institutions in which he has been confined during these past months. See Hall v. Stone, 170 F.3d 706 (7th Cir. 1999) (order under 28 U.S.C. § 1915(b) directs Warden as trustee of account to disburse amounts owed in accordance with statutory directive). Petitioner will need to work with prison officials to determine 1) whether petitioner had income in the month of

November 2006, 2) whether he had income in the months of December 2006, January 2007, and February 2007, and 3) whether he had income before March 9, 2007 that is not included in the table above. If petitioner had income in December 2006 he owes 20 percent of that amount to the court. If petitioner had income during the months of December 2006, January 2007, or February 2007 he owes 40 percent of each month's income to the court. If petitioner had income before March 9, 2007, he owes 40 percent of that amount to the court. Petitioner owes nothing for any month in which he had no income.

In order to qualify for indigent status in his present case, petitioner will have to pay the full amount he is in arrears (at least \$44.03 plus whatever additional sums will be calculated from the relevant months discussed above), and provide this court with copies of his prison financial records for the periods beginning November 1, 2006 and ending March 8, 2007. I will then be able to confirm that petitioner has paid the full amount he is in arrears. At this point, however, petitioner's request for leave to proceed in forma pauperis must be denied for his failure to pay amounts he owes under the Prison Litigation Reform Act despite his having the means to do so.

#### ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis is DENIED.

FURTHER, IT IS ORDERED that until petitioner has paid the amounts he is in arrears under § 1915(b)(2) in this case, he may not apply for leave to proceed in forma pauperis in any future action in this court except under the circumstances permitted under 28 U.S.C. § 1915(g).

Entered this 26th day of September, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge