

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

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NATHAN GILLIS,

Petitioner,

ORDER

v.

08-cv-0117-bbc

GREG GRAMS, Warden,  
Columbia Correctional Institution,

Respondent.

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On April 21, 2008, I granted petitioner's motion for the return of his \$455 appellate filing fee, dkt. 19, because this court had denied petitioner's requests for a certificate of appealability, entry of final judgment and permission to take an interlocutory appeal, dkt. 11. However, the next day, the court received petitioner's motion to withdraw his request for the return of the filing fee. Dkt. 17. Petitioner's only explanation was that the court of appeals "want[s] the filing fee to decide if the appeal is necessary." *Id.* On April 30, 2008, petitioner filed a motion for clarification for why the clerk of court had never docketed his filing fee or sent him a receipt. Dkt. 20. In this latest motion, petitioner explains that the Seventh Circuit Court of Appeals told him that as of April 15, 2008, the district court docket did not note the receipt of his appellate filing fee. As a result, petitioner states that he paid a second appellate filing fee to this court so the court of appeals would consider his appeal. He seeks the return of one of his \$455 appellate filing fees.

The docket sheet in this case shows that an appellate filing fee of \$455 was received on April 9, 2008 and entered on the docket sheet on April 14, 2008. Therefore, it is reasonable to

assume that the receipt of the filing fee did not appear on the docket sheet when the court of appeals accessed it. It is unclear from petitioner's submissions whether he now intends to pursue his appeal by seeking a certificate of appealability from the court of appeals. Fed. R. App. P. 22(b) (if district judge denies application for certificate of appealability, defendant may request circuit judge to issue it). If that is the case, this court must retain a \$455 appellate filing fee so that petitioner may pursue his appeal.

As of the date of this order, this court has not received a second payment for an appellate filing fee from petitioner. Therefore, I am directing petitioner to submit proof of payment of the second filing fee. In the event that petitioner has overpaid this court, his overpayment will be returned. However, I note that as of April 28, 2008, petitioner had an outstanding balance of \$27.97 in case no. 02-cv-681-bbc and \$202.20 in case no. 03-cv-579-bbc, totaling \$230.17. Any overpayment would be applied to petitioner's outstanding balance before being returned to petitioner.

In sum, until petitioner 1) clarifies whether he intends to pursue an appeal and 2) shows proof of payment of a second \$455 appellate filing fee, I am vacating the April 21, 2008 order, dkt. 19, to the extent that it directs the clerk of court to return petitioner's \$455 appellate filing fee. Petitioner has until June 2, 2008 in which to respond to the above requests.

#### ORDER

IT IS ORDERED that the court's order of April 21, 2008 is VACATED to the extent that it directs the clerk of court to return petitioner's \$455 appellate filing fee. IT IS FURTHER ORDERED that petitioner has until June 2, 2008 in which to advise the court whether he is

pursuing his appeal in the federal court of appeals and submit proof of payment, if any, of a second \$455 appellate filing fee.

Entered this 2d day of May, 2008.

BY THE COURT:

/s/

Stephen L. Crocker

Magistrate Judge