

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

PRIEST JOHNSON,

Petitioner,

ORDER

v.

08-cv-0064-bbc

PETER HUIBREGTESE, Warden,
Wisconsin Secure Program Facility,

Respondent.

On April 21, 2008, this court gave petitioner until May 21, 2008 by which either to pay the \$455 appellate filing and docketing fee or to file a motion to proceed *in forma pauperis* on appeal in this habeas corpus action under 28 U.S.C. § 2254. Dkt. 8. Now petitioner has asked the court to reconsider that order, asserting that because the Prison Litigation Reform Act (PLRA) does not apply in state habeas proceedings, he is not required to pay a filing fee on appeal. Dkt. 12. He also requests that the court hold the April 21, 2008 order in abeyance until it rules on the appellate filing fee issue and extend the deadline for complying with that order. Dkt. 13.

Petitioner cites *Martin v. United States*, 96 F.3d 853 (7th Cir. 1996) in support of his argument that he does not have to pay a filing fee on appeal. However, he has misinterpreted the ruling in that case. Under the PLRA, prisoners proceeding *in forma pauperis* must prepay appellate filing fees in full. *Martin*, 96 F.3d at 856; 28 U.S.C. § 1915(b)(2). As petitioner notes,

the court of appeals in *Martin* held that the Act's filing fee requirements do not apply in § 2254 cases. *Martin*, 96 F.3d at 855. In cases like this one that fall outside the Act, "the district court is free to determine the prisoner's eligibility to proceed *in forma pauperis* under the indigency standard it has established for cases not covered by the PLRA." *Longbehn v. Reno*, 27 F. Supp. 2d 1162, 1164 (W.D. Wis. 1998); *see also* 28 U.S.C. § 1915(a). If a state habeas petitioner is not found indigent, he must pre-pay the appellate filing fee as required under 28 U.S.C. § 1913. *See Longbehn v. United States*, 169 F.3d 1082, 1083 (7th Cir. 1999) (permission to proceed *in forma pauperis* means prisoner need not *pre-pay* filing fees). *Martin* does not relieve petitioner of his duty to either file a motion to proceed *in forma pauperis* or pay the appellate filing fee. *Id.* (even though PLRA did not apply, litigant has legal responsibility to pay filing and docketing fees to extent feasible).

Given the above ruling, it is not necessary to hold the court's April 21, 2008 order in abeyance. However, I will grant petitioner's request for an extension of time to comply with that order. Petitioner will have until June 4, 2008 by which to pay the appellate filing fee or file a motion to proceed *in forma pauperis* on appeal. No further extensions will be granted.

ORDER

IT IS ORDERED that:

1. Petitioner's motion in response to the court's April 21, 2008 order is DENIED;

2. Petitioner's motion to hold the April 21, 2008 order in abeyance is DENIED as unnecessary;
and

3. Petitioner will have until June 4, 2008 by which either to pay \$455 to the clerk of this court
as his appellate filing and docketing fee or to file a motion to proceed *in forma pauperis* on appeal.

If petitioner fails to exercise one of these options by this deadline, then this court will deem his
appeal abandoned. This court will not grant any further extensions.

Entered this 27th day of May, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge