

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

MICHAEL SWANSON,

Petitioner,

v.

ROBERT WERLINGER, Warden,
Federal Correctional Institution – Oxford,

Respondent.

ORDER

10-cv-556-wmc
App. No. 14-1297

Federal prisoner Michael Swanson filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the sentence he received in *United States v. Swanson*, Case No. 00-cr-30018 (C.D. Ill). On January 17, 2014, the court dismissed Swanson’s petition. Swanson has filed a notice of appeal from that decision and he requests leave to proceed *in forma pauperis*. It does not appear that Swanson has filed his appeal in bad faith or that leave to proceed is otherwise precluded. Therefore, the court concludes that he is eligible to pursue an appeal without prepayment of the docketing fee. *See* Fed. R. App. P. 24(a)(3).

Having found that Swanson is eligible to proceed *in forma pauperis*, the court must determine whether he has the ability to pay some portion of the \$505.00 appellate docketing fee. Although appeals taken in federal habeas corpus proceedings are not subject to filing-fee requirements found in the Prison Litigation Reform Act (the “PLRA”), 28 U.S.C. § 1915(b), a court may nonetheless require an indigent appellant in a non-PLRA case to “pay a fee commensurate with their ability to do so.” *Walker v. O’Brien*, 216 F.3d 626, 638 n.5 (7th Cir. 2000) (citing *Longbehn v. United States*, 169 F.3d 1082, 1083-84 (7th Cir. 1999)). In other words, a habeas petitioner may be required to make an initial payment in order to have his appeal filed and to remit monthly installment payments thereafter until he has paid the full appellate filing fee. *See Webb v. Anderson*, 224 F.3d 649, 653 (7th Cir. 2000).

After considering his supporting documentation, the court finds that Swanson has adequate financial resources to make a \$20.00 initial partial payment of the \$505.00 appellate docketing fee in this case. For his appeal to proceed, Swanson must remit this amount no later than April 7, 2014.

ORDER

IT IS ORDERED that:

1. The court certifies that the appeal filed by petitioner Michael Swanson is not taken in bad faith for purposes of Fed. R. App. P. 24(a)(3).
2. Swanson's motion for leave to proceed *in forma pauperis* on appeal (Dkt. # 66) is GRANTED.
3. No later than April 7, 2014, Swanson shall submit a check or money order made payable to the Clerk of Court in the amount of \$20.00 as an initial partial payment of the docketing fee for his appeal.
4. Swanson is advised that, if he fails to tender the initial partial fee payment as directed, his appeal may be dismissed without further notice.

Entered this 7th day of March, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge