

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

-----  
AARON DeROO,

Petitioner,

v.

CAROL HOLINKA, Warden,

Respondent.  
-----

ORDER

11-cv-028-bbc

On January 31, 2011, I denied petitioner Aaron DeRoo's petition for a writ of habeas corpus under 28 U.S.C. § 2241 because he had not shown he was in custody in violation of the Constitution or the laws of the United States. On February 15, I denied his motion for reconsideration.

Now petitioner has filed a notice of appeal, a request to proceed in forma pauperis on appeal and a request for a certificate of appealability. Petitioner's request for a certificate of appealability will be denied because certificates of appealability are not necessary for appeals of denials of 28 U.S.C. §2241 petitions.

In considering petitioner's request to proceed in forma pauperis on appeal, I note that his appeal is not subject to the 1996 Prison Litigation Reform Act. Walker v. O'Brien, 216

F.3d 626, 628-629 (7th Cir. 2000) ("the PLRA does not apply to any requests for collateral relief under 28 U.S.C. §§ 2241, 2254, or 2255"). Nevertheless, in determining whether a petitioner is eligible for indigent status on appeal under 28 U.S.C. § 1915, the court must find both that the petitioner does not have the means to pay the \$455 fee for filing his appeal and that the appeal is taken in good faith. 28 U.S.C. § 1915(a)(1) and (3). I do not intend to certify that petitioner's appeal is not taken in good faith.

In determining whether a habeas corpus petitioner is eligible for pauper status, the court applies the formula set out in 28 U.S.C. § 1915(b)(1). Specifically, from the petitioner's trust fund account statement for the six-month period immediately preceding the filing of his appeal, I add the deposits made to petitioner's account and calculate 20% of the greater of the average monthly deposits or the average monthly balance in the account. If the 20% figure is more than the fee petitioner owes for filing his appeal, he may not proceed in forma pauperis. If the 20% figure is less than \$455, he must prepay whatever portion of the fee the calculation yields.

From the trust fund account statement that petitioner has submitted, I conclude that he is able to prepay an initial partial payment of his appeal fee in the amount of \$66.55.

ORDER

IT IS ORDERED that petitioner Aaron DeRoo's request for leave to proceed in forma pauperis on appeal is GRANTED. Petitioner may have until March 23, 2011, in which to submit a check or money order made payable to the clerk of court in the amount of \$66.55. If, by March 23, 2011, petitioner fails to pay the initial partial payment or explain his failure to do so, then I will advise the court of appeals of his noncompliance in paying the assessment so that it may take whatever steps it deems appropriate with respect to this appeal.

IT IS FURTHER ORDERED that petitioner's request for a certificate of appealability is DENIED as unnecessary.

Further, the clerk of court is requested to insure that the court's financial records reflect petitioner's obligation to pay the \$66.55 initial partial payment and the remainder of the \$455 fee in monthly installments.

Entered this 3d day of March, 2011.

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