

United States Court of Appeals
For the Eighth Circuit

No. 19-2776

Arden Pawneeleggins

Plaintiff - Appellant

v.

Jared, Kitchen Boss, Mike Durfee State Prison

Defendant - Appellee

Appeal from United States District Court
for the District of South Dakota - Sioux Falls

Submitted: October 24, 2019

Filed: October 31, 2019

[Unpublished]

Before BENTON, WOLLMAN, and KOBES, Circuit Judges.

PER CURIAM.

South Dakota inmate Arden Pawneeleggins appeals the district court's dismissal of his pro se 42 U.S.C. § 1983 complaint for failure to comply with a court order to pay an initial partial filing fee. Having jurisdiction under 28 U.S.C. § 1291, the judgment is vacated and the case is remanded for further proceedings.

This court concludes that the dismissal of Pawneeleggin's action was an abuse of discretion because—based on his certified inmate account statements—it appears that his failure to make an initial partial payment on time was due to a lack of available funds. *See Boyle v. Am. Auto. Serv., Inc.*, 571 F.3d 734, 742 (8th Cir. 2009) (standard of review); 28 U.S.C. § 1915(b)(1) (stating that court shall collect initial partial filing fee “when funds exist”), (b)(4) (providing that prisoner shall not be prohibited from bringing civil action because he lacks assets and means to pay initial partial filing fee); *Taylor v. Delatoore*, 281 F.3d 844, 850 (9th Cir. 2002) (for prisoners whose prior account balances resulted in assessment of initial fee, but who do not have funds available when payment is ordered, § 1915(b)(4) should protect them from having their cases dismissed for non-payment).

The judgment is vacated and the case is remanded for further proceedings.
