

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CLINTON T. ELDRIDGE,

Petitioner,

v.

R. WILEY,

Respondent.

Case No. 05-cv-73-JPG

**MEMORANDUM AND ORDER**

This matter comes before the Court on petitioner Clinton T. Eldridge's Motion for Leave to Appeal in Forma Pauperis (Doc. 36). Eldridge filed a Notice of Appeal on October 8, 2008 as to this Court's Order adopting the Report and Recommendation of Magistrate Judge Donald G. Wilkerson and dismissing this case with prejudice, and the accompanying judgment (Doc. 34). Eldridge attached an affidavit setting forth his inability to pay the required fees and a certified copy of his prison trust account.

**BACKGROUND**

On appeal Eldridge contends that this Court erred in determining that he must first exhaust his administrative remedies before the Court may entertain his petition for sentence credit for time previously served.

**ANALYSIS**

A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). The test for determining if an appeal is in good faith or not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v.*

*Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738 (1967)); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

The law is clear that requests for sentence credit for time previously served must be made initially through the Bureau of Prisons's administrative channels, which are governed by federal regulation. See *United States v. Wilson*, 503 U.S. 329, 334 (1992); *Romandine v. United States*, 206 F.3d 731, 736 (7th Cir. 2000). Eldridge has conceded he has made no such administrative requests. Therefore, he has presented no legal points in this appeal that are reasonably arguable on their merits. Accordingly, the Court finds that this appeal is not taken in good faith.

### **CONCLUSION**

For the foregoing reasons, the Court **DENIES** Eldridge's Motion for Leave to Appeal in Forma Pauperis (Doc. 36).

**IT IS SO ORDERED.**

**DATED: November 17, 2008**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**