

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

TYRONE FRAZIER,)	
)	
Petitioner,)	
)	
vs.)	NO. 3:07-CV-334
)	
ED BUSS,)	
)	
Respondent.)	

OPINION and ORDER

This matter is before the Court on the: (1) Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody Seeking Review of a Prison Disciplinary Sanction; and (2) Prisoner Petition to Proceed in Forma Pauperis, both filed by Petitioner, Tyrone Frazier, on July 18, 2007. For the reasons set forth below, the Court: (1) **GRANTS** Tyrone Frazier leave to proceed *in forma pauperis* (docket # 2); (2) **WAIVES** the filing fee; (3) **TAKES UNDER ADVISEMENT** the habeas petition (docket # 1); (4) **ORDERS** Tyrone Frazier to file an amended petition on or before August 30, 2007 along with copies of all relevant documents related to his hearing which he has or can obtain; and (5) **CAUTIONS** Tyrone Frazier that if he does not respond to this order as directed, this case will be dismissed without further notice.

BACKGROUND

Tyrone Frazier, a *pro se* prisoner, filed an incomplete habeas corpus petition accompanied with an *in forma pauperis* petition.

DISCUSSION

In Forma Pauperis Petition

The Petitioner's *in forma pauperis* petition demonstrates that he has insufficient monthly income to afford even the \$5.00 filing fee. Therefore he will be granted leave to proceed *in forma pauperis* and the fee will be waived.

Incomplete Habeas Corpus Petition

Petitioner's habeas corpus petition is on a standardized form used widely throughout this district. Question 13 asks about why he did not present any of his current grounds during his prior appeals. In response, Petitioner states, "I am illiterate and the institution refused to appoint me lay advocate to properly present my appeal and habeas corpus." Petition at 8. Though he does not identify which of his current grounds he did not previously present during his appeals, in response to question 15, he identifies that he had inmate assistance at his hearing and during both stages of the prison appeal process.

The Supreme Court does not require the appointment of a lay advocate, even for an illiterate inmate, unless the institution

prevents the accused from obtaining assistance from other inmates on his own. *Wolff v. McDonnell*, 418 U.S. 539, 570 (1974). All that is required is that "he should be free to seek the aid of a fellow inmate, or if that is forbidden, to have adequate substitute aid in the form of help from the staff or from a sufficiently competent inmate designated by the staff." *Id.*

Here, not only could Petitioner obtain such help on his own, he did. Therefore neither his illiteracy nor the prison's refusal to appoint him an advocate is a basis for excusing not exhausting all of his claims during the state prison appeal process. "[T]o exhaust a claim, and thus preserve it for collateral review under § 2254, a prisoner must present that legal theory to the . . . Final Reviewing Authority. . . ." *Moffat v. Broyles*, 288 F.3d 978, 982 (7th Cir. 2002).

Additionally, Petitioner argues that he was denied witness statements, but he does not state when or how he requested these statements. Nor does he explain what he believes these statements would have said and why they would have been relevant. The amended petition should address this deficiency.

Therefore, Petitioner will be ordered to file an amended petition addressing only grounds that he presented to the final reviewing authority. Also, he shall attach copies of any and all documents related to his disciplinary proceeding and appeals which he has or can obtain.

CONCLUSION

For the reasons set forth above, the Court: (1) **GRANTS** Tyrone Frazier leave to proceed *in forma pauperis* (docket # 2); (2) **WAIVES** the filing fee; (3) **ORDERS** Tyrone Frazier to file an amended petition on or before August 30, 2007 along with copies of all relevant documents related to his hearing which he has or can obtain; and (4) **CAUTIONS** Tyrone Frazier that if he does not respond to this order as directed, this case will be dismissed without further notice.

DATED: August 2, 2007

**/s/RUDY LOZANO, Judge
United States District Court**