

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF KENTUCKY  
 SOUTHERN DIVISION  
 (at London)

LEON COMBS,	)	
	)	
Plaintiff,	)	Civil Action No. 6: 08-199-DCR
	)	
V.	)	
	)	
JOSEPH M. HOOD, et al.,	)	<b>MEMORANDUM OPINION</b>
	)	<b>AND ORDER</b>
	)	
Defendants.	)	

\*\*\* \*\*

This matter is before the Court for consideration of the “Notice of Appeal” [Record No. 67] filed by Leon Combs, (“Combs”) *pro se* plaintiff-appellant. This action was dismissed on October 21, 2008, [Record Nos. 9 and 10], and Combs filed a Notice of Appeal on October 27, 2008.

**I. DISCUSSION**

In June 27, 2008, Combs filed a *pro se* civil rights complaint [Record No. 2] in which he asserted claims under 28 U.S.C. § 1331, pursuant to the doctrine announced in *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). The Court dismissed the complaint with prejudice. When Combs filed the “Notice of Appeal” on October 27, 2008, he submitted neither the \$455.00 appellate filing fee nor a motion seeking permission to proceed as a pauper on appeal. Combs is advised that this Court cannot grant him pauper status on appeal. Title 28 of the United States Code, §1915(a)(3), specifically provides that “[a]n appeal may not be taken

in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” This Court has already determined that an appeal of this matter would not be taken in good faith [Record No. 10].

In *Owens v. Keeling*, 461 F.3d 763, 773- 775 (6<sup>th</sup> Cir. 2006), the Sixth Circuit outlined the steps for seeking pauper status on appeal when a district court has certified that an appeal would not be taken in good faith. For prisoners, a district court’s certification that the appeal is not or would not be taken in good faith allows two choices: the prisoner may pay the full filing fee and any relevant costs and proceed on appeal for plenary review, or he may contest the certification decision by filing a motion for leave to proceed as a pauper in the court of appeals under Federal Rule of Appellate Procedure 24(a)(5). *See Owens*, 461 F.3d at 774. An appellant who receives a certification that his appeal is not taken in good faith or is otherwise denied permission to proceed on appeal *in forma pauperis* by the district court may file a motion to proceed on appeal *in forma pauperis* with the court of appeals. FED. R. APP. P. 24(a)(5). This must be done within thirty days and with supporting documentation, including an affidavit of assets and a six-month certificate of inmate account.

## II. CONCLUSION

Accordingly, the Court being sufficiently advised, it is hereby **ORDERED** as follows:

(1) Plaintiff-Appellant Leon Combs will not be granted *in forma pauperis* status on appeal.

(2) Plaintiff-Appellant Leon Combs may take either of two steps: (a) pay the \$455.00 filing fee, in full, in this Court within thirty days of the entry of this Order; or (b) file a motion

to proceed on appeal *in forma pauperis* in the Sixth Circuit Court of Appeals. FED. R. APP. P. 24(a)(5). This must be done within thirty days of the date of entry of this Order. The motion must be accompanied by an affidavit of assets and a six-month certificate of inmate account.

(3) The Clerk of this Court is directed to forward a copy of this Order to the Clerk of the Court of Appeals for the Sixth Circuit.

This 31st day of October, 2008.



**Signed By:**

**Danny C. Reeves** DCR

**United States District Judge**