

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT PADUCAH
CIVIL ACTION NO. 5:10CV-P195-R**

MICHEAL WAYNE LONG

PLAINTIFF

v.

DEPARTMENT OF CORRECTIONS *et al.*

DEFENDANTS

MEMORANDUM AND ORDER

Finding that Plaintiff is subject to the three-strikes provision under 28 U.S.C. § 1915(g), the Court, by Order entered December 7, 2010, denied his application to proceed without prepayment of fees and directed him to pay the \$350 filing fee in full within 30 days (DN 5). In response, Plaintiff filed a motion to proceed under 28 U.S.C. § 1915(b)(4) (DN 6).

Under § 1915(b)(4), “[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.” This provision, however, is applicable only to those prisoners who are permitted to proceed under an installment plan under § 1915(b) and who have been assessed an initial partial filing fee under § 1915(b)(1). Because Plaintiff is prohibited from proceeding *in forma pauperis* under § 1915, he is not entitled to pay his fee under the installment plan set forth in § 1915(b). He was not ordered to pay an initial partial filing fee but was ordered to pay the entire \$350 filing fee in full.

IT IS THEREFORE ORDERED that Plaintiff’s motion to proceed under § 1915(b)(4) (DN 6) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff must pay the requisite \$350 filing fee for the instant action to the Clerk of Court within 30 days from entry of this Order.

The payment shall be made payable to “Clerk, U.S. District Court” and sent to the following address:

Office of the Clerk
United States District Court
Western District of Kentucky
106 Gene Snyder U. S. Courthouse
601 West Broadway
Louisville, Kentucky 40202-2249

Plaintiff is WARNED that his failure to comply with this Order within 30 days will result in dismissal of the action and his continued responsibility for payment of the \$350 filing fee.

Date:

cc: Plaintiff, *pro se*
4413.005