

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CHARLIE SPEARS (#79473)

VERSUS

BURL CAIN, ET AL.

CIVIL ACTION

15-11-SDD-RLB

ORDER

This matter comes before the Court on the Plaintiff's *Motion for Certificate of Appealability*.¹ The Plaintiff does not need a certificate of appealability from this Court in order to appeal the dismissal of his 42 U.S.C. § 1983 claims.² As such, the Plaintiff's Motion will be denied as unnecessary and will be treated as a *Notice of Appeal*. Accordingly,

IT IS HEREBY ORDERED that the Plaintiff's Motion is **DENIED** as unnecessary.

Upon it appearing to the Court that the Plaintiff's *Notice of Appeal* is accompanied by neither payment of \$ 505.00 (the full amount of the applicable appellate filing fee) nor by a properly completed *Motion to Proceed In Forma Pauperis on Appeal*, pursuant to Rule 24(a) of the Federal Rules of Appellate Procedure, together with a properly completed Statement of Account, signed by an authorized officer at the Plaintiff's institution, certifying to the average six-month deposits and balance in the Plaintiff's inmate account(s);


IT IS FURTHER ORDERED that, within twenty-one (21) days of the date of this *Order*, the Plaintiff shall submit to this Court either \$ 505.00 (the full amount of the applicable appellate filing fee) or a properly completed *Motion to Proceed In Forma*

¹ Rec. Doc. 24.

² See *Madis v. Edwards*, 347 Fed. Appx. 106, 107 (5th Cir. 2009).

Pauperis on Appeal, pursuant to Rule 24(a) of the Federal Rules of Appellate Procedure (copy attached), together with a properly completed Statement of Account (copy attached), signed by an authorized officer at the Plaintiff's institution, certifying to the average six-month deposits and balance in the Plaintiff's inmate account(s). The failure of the Plaintiff to comply with this *Order* within the time allowed may result in the dismissal of the appeal in this case without further notice from the Court.

Baton Rouge, Louisiana the 16 day of May, 2016.



SHELLY D. DICK, DISTRICT JUDGE
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

(Plaintiff)

Inmate (DOC) Number

VERSUS

(Defendants)

MOTION TO PROCEED IN FORMA PAUPERIS

COMES NOW _____ Plaintiff, in the above-styled cause and, pursuant to the provisions of Title 18, United States Code, Section 1915, respectfully moves for leave to proceed in forma pauperis without prepayment of fees, costs or security given therefor. In accordance with 28 U.S.C. § 1915(b)(1) and (2), the Plaintiff shall be required to pay an initial partial filing fee and thereafter, prison officials shall be required to forward monthly payments from the Plaintiff's inmate account until the entire filing fee is paid.

Date: _____

Signature

AFFIDAVIT IN SUPPORT OF REQUEST
TO PROCEED IN FORMA PAUPERIS

I, _____, declare that I am the Plaintiff in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty that I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further declare that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? YES () NO ()
 - a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer.
 - b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?

- a. Business, profession, or form of self-employment (hobby craft sales included)? YES () NO ()
- b. Rent payments, interest or dividends? YES () NO ()
- c. Pensions, annuities or life insurance payments? YES () NO ()
- d. Gifts or inheritances? YES () NO ()
- e. Any other sources? YES () NO ()

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past 12 months.

3. Do you own any cash, or do you have money and/or bonds in a checking or savings account? (Include any funds in prison accounts.) YES () NO (). If the answer is YES, state the total value of the items owned.

Prison Drawing Account \$

Prison Savings Account:

A. Cash \$

_____ B. Bonds \$

Other (specify)

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishing and clothing)? YES () NO ()

If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those person, and indicate how much you contribute toward their support.

I declare under penalty of perjury that the foregoing is true and correct.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

X _____
Signature of Plaintiff

Date

STATEMENT OF ACCOUNT
(Certified Institutional Equivalent)

I hereby certify that _____, inmate number _____, the Plaintiff herein, has the following sums of money on account to his credit at _____, the institution where he is confined:

Prison Drawing Account: \$

Prison Savings Account: \$

_____ A. Cash

_____ B. Bonds

I further certify that the average monthly deposits for the preceding six months is \$ _____.

(The average monthly deposits are to be determined by adding the deposits made during a given month and dividing that total by the number of deposits made during that month. This is repeated for each of the six months. The average from each of the six months are to be added together and the total is to be divided by six.)

I further certify that the average monthly balance for the prior six months is \$ _____.

(The average monthly balance is to be determined by adding each day's balance for a given month and dividing that total by the number of days in that month. This is to be repeated for each of the six months. The balance from each of the six months are to be added together and the total is to be divided by six.)

Date Certified

Signature of Authorized Officer of Institution