

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

ANSUR P. ADAMS, Register No. 83865, Plaintiff, v. BOONE COUNTY JAIL, et al., Defendants. No. 08-4242-CV-C-NKL

ORDER

On October 28, 2008, United States Magistrate Judge William A. Knox recommended dismissing plaintiff's claims. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions filed by plaintiff on November 14, 2008. The issues raised in plaintiff's exceptions were adequately addressed in the report and recommendation. In order to recover damages for an alleged unconstitutional conviction or imprisonment or other harm caused by unlawful actions that would render a conviction or sentence invalid, a plaintiff filing under 42 U.S.C. § 1983 must first prove that the conviction or sentence has been set aside. Wallace v. Kato, 549 U.S. 384, ___, 127 S. Ct. 1091, 1093 (2007). Thus, plaintiff's claim for damages is not cognizable under section 1983 for a conviction or sentence that has not been so invalidated. Id. (citing Heck v. Humphrey, 512 U.S. 477, 486-87 (1994)). Plaintiff makes no allegation that his sentence was set aside. Allegations that his motion for jail time credit was granted and he was released from confinement do not necessarily mean that his sentence was invalidated.

The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted. If, however, plaintiff has evidence that his sentence was, in fact, set aside, he may file a motion for reconsideration with this court.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$455.00 appellate filing fee, regardless of the outcome of

the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

Plaintiff was granted leave to proceed in forma pauperis on a provisional basis, and by doing so, the court determined to forego the collection of the \$350.00 filing fee established for civil cases. Plaintiff was warned that the court would collect the entire \$350.00 filing fee if he filed another pleading in this case. See 28 U.S.C. § 1915(b)(2).¹ A review of plaintiff's financial documentation indicates he is capable of paying an initial partial filing fee of \$1.84.

IT IS, THEREFORE, ORDERED that plaintiff's initial partial filing fee is calculated at \$1.84 and the Missouri Department of Corrections is directed to deduct from plaintiff's inmate account, and forward to the court, the initial partial filing fee and installment payments, in accord with the provisions of 28 U.S.C. § 1915, until the \$350.00 filing fee is paid in full. It is further

ORDERED that the Report and Recommendation of October 28, 2008 is adopted. [6]
It is further

ORDERED that plaintiff's claims are dismissed, without prejudice, pursuant to the provisions of 28 U.S.C. § 1915A, for failure to state a claim for which relief can be granted.

/s/

NANETTE K. LAUGHREY
United States District Judge

Dated: January 16, 2009
Jefferson City, Missouri

¹The initial payment is assessed at "20 percent of the greater of (A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal." The installment payments will be assessed at "20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid." 28 U.S.C. § 1915.