

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
MAR 19 2015
[Signature]
CLERK

FRANKLIN SANDOVAL NELSON,

Plaintiff,

vs.

JUDGE JON S. FLEMMER, STATE'S
ATTORNEY KERRY F. CAMERON,
WARDEN ROBERT DOOLEY, and
OFFICER OF THE COURT TIMOTHY J.
CUMMINGS, IN THEIR OFFICIAL AND
INDIVIDUAL CAPACITIES;

Defendants.

1:15-CV-01001-CBK

ORDER

Plaintiff attempted to challenge his conviction of third degree rape in the South Dakota Fifth Judicial Circuit Court, Roberts County, and sentenced of 25 years custody by filing what was captioned as a civil rights complaint pursuant to 42 U.S.C. § 1983 and petition for removal of criminal proceedings to federal court. I held that the only means of attacking his state court conviction and sentence was pursuant to 28 U.S.C. § 2254, construed his purported civil rights complaint as a petition for a writ of habeas corpus, and dismissed the petition without prejudice for failure to exhaust state court direct appeal and habeas remedies.

Petitioner has filed motions to appoint counsel, for an order to show cause, for copies of transcripts, for a pendent lite order, and to appeal without the prepayment of fees. His request for a certificate of appealability has been denied by separate order.

I previously found petitioner to be indigent. However, pursuant to the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(a)(3), an appeal may not be taken in

forma pauperis if it is not taken in good faith. I certify, pursuant to Fed. R. App. P. 24(a)(4), that this appeal is not taken in good faith and is frivolous.

The PLRA "makes prisoners responsible for their filing fees the moment the prisoner files an appeal." Henderson v. Norris, 129 F.3d 481, 483 (8th Cir. 1997). "Thus, prisoners who appeal judgments in civil cases must sooner or later pay the appellate filing fees in full." *Id.*, 28 U.S.C. § 1915(b)(1).

Petitioner's case has been dismissed and judgment has entered. The case is closed and this Court cannot entertain further requests for relief, other than in conjunction with a notice of appeal. Petitioner's motion for an order that he be released in thirty days or show cause why he should not be released, his motion for an order directed to the South Dakota state court clerk to provide him copies of documents, and his motion for the appointment of counsel are frivolous at this juncture.

Now, therefore,

IT IS ORDERED:

1. Petitioner's motions, Doc. 12, to appoint counsel, for an order to show cause, for copies of transcripts, and for a pendent lite order are denied.
2. Petitioner's motion, Doc. 15, to appeal without the prepayment of fees is denied.
3. Petitioner is required by the Prison Litigation Reform Act, 28 U.S.C. § 1915, to pay the \$505 filing and docketing fees. The institution having custody of the plaintiff is hereby directed that, whenever the amount in plaintiff's trust account exceeds \$10.00, monthly payments that equal 20% of the funds credited to the plaintiff's trust account the preceding month shall be forwarded to the U.S. District Court Clerk's office, pursuant to 28 U.S.C. § 1915(b)(2), until the \$505 appellate filing fee is paid in full.

DATED this 17th day of March, 2015.

BY THE COURT:


CHARLES B. KORNMANN
United States District Judge