

UNITED STATES DISTRICT COURT
 DISTRICT OF SOUTH DAKOTA
 SOUTHERN DIVISION

FILED

JUN 29 2017


 CLERK

JAMES WREY KANE,

Plaintiff,

vs.

TIM REISCH,
 MELINDA JOHNSON,
 DOUGLAS WEBER,
 ROBERT DOOLEY,
 SOUTH DAKOTA DEPARTMENT OF
 CORRECTIONS, AND
 UNKNOWN CENTRAL RECORDS
 SUPERVISORS AND FILING
 CLERK(S),

Defendants.

4:17-CV-04007-RAL

ORDER GRANTING LEAVE
 TO PROCEED IN FORMA
 PAUPERIS ON APPEAL

Plaintiff, James Wrey Kane ("Kane"), filed this lawsuit pursuant to 42 U.S.C. § 1983. Doc. 1. This Court screened and dismissed his complaint without prejudice to refile. Doc. 7. Kane then moved for reconsideration of the dismissal, Doc. 9, and this Court denied his motion. Doc. 13. On May 17, 2017, Kane filed a notice of appeal, Doc. 14, but did not move for leave to proceed in forma pauperis on appeal or submit his prison trust account report.

Under the Prison Litigation Reform Act (PLRA), a prisoner who "files an appeal in forma pauperis . . . [is] required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). This obligation arises "the moment the

prisoner . . . files an appeal.’” *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (quoting *In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997)). Therefore, “ [w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment plan.’” *Id.* (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)). “[P]risoners who appeal judgments in civil cases must sooner or later pay the appellate filing fees in full.” *Id.* (citing *Newlin v. Helman*, 123 F.3d 429, 432 (7th Cir. 1997)).

Under *Henderson*, “failure to file the prison account information . . . result[s] in the assessment of an initial appellate partial fee of \$35 or such other amount that is reasonable, based on whatever information the court has about the prisoner's finances.” *Id.* at 484. On January 31, 2017, Kane submitted a prisoner trust account showing that his average monthly deposits were \$43.40. Doc. 5. Therefore, he must pay an initial partial appellate filing fee of \$8.68, which is 20 percent of \$43.40. See 28 U.S.C. § 1915(b)(1).

Accordingly, it is

ORDERED that this Court grants Kane leave to proceed in forma pauperis on appeal provided he pays an initial partial appellate filing fee of \$8.68 by July 28, 2017, made payable to the Clerk, U.S. District Court. It is further

ORDERED that the institution having custody of Kane is directed that whenever the amount in his trust account, exclusive of funds available to him in his frozen account, exceeds \$10, monthly payments that equal 20 percent of

the funds credited to the account the preceding month shall be forwarded to the United States District Court Clerk's office pursuant to 28 U.S.C. § 1915(b)(2), until the appellate filing fee of \$505 is paid in full.

Dated June 29th, 2017.

BY THE COURT:



ROBERTO A. LANGE
UNITED STATES DISTRICT JUDGE