

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DEREK LUCAS,)	
)	
Plaintiff,)	
)	
VS.)	No. 16-2309-JDT-cgc
)	
J.C. HOLLAND, ET AL.,)	
)	
Defendants.)	

ORDER DIRECTING PLAINTIFF TO FILE AN UPDATED *IN FORMA PAUPERIS*
AFFIDAVIT OR PAY THE FULL \$505 APPELLATE FILING FEE

Plaintiff Derek Lucas, a prisoner acting *pro se*, filed a civil complaint pursuant to *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1974). (ECF No. 1.) The Court granted leave to proceed *in forma pauperis* and assessed the civil filing fee pursuant to the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. §§ 1915(a)-(b). (ECF No. 5.) On March 22, 2017, the Court dismissed the complaint *sua sponte* pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1) and certified that an appeal would not be taken in good faith. (ECF No. 8.) Judgment was entered the same day. (ECF No. 9.) On April 13, 2017, Plaintiff filed a notice of appeal (ECF No. 10) and a motion for leave to appeal *in forma pauperis* (ECF No. 11).

Generally, a plaintiff granted leave to proceed *in forma pauperis* is not required to pay filing fees. 28 U.S.C. § 1915(a)(1). Because Plaintiff is a prisoner, however, he must pay the entire \$505 appellate filing fee, although he may be able to take advantage of the installment payment method of § 1915(b). See *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997), *partially overruled on other grounds by LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013). In order to take

advantage of the installment procedures, a prisoner plaintiff must submit, along with the notice of appeal, an updated *in forma pauperis* affidavit and inmate trust account statement. *Id.* at 610; 28 U.S.C. § 1915(a)(2).

In this case, while Plaintiff submitted a current trust account statement with his motion to proceed *in forma pauperis*, he neglected to submit an updated *in forma pauperis* affidavit. Therefore, at the present time, he is not eligible to take advantage of the installment procedures of § 1915(b). Plaintiff is, however, liable to the Court for the full \$505 appellate filing fee, which accrued at the moment the notice of appeal was filed. Accordingly, Plaintiff is hereby ORDERED to submit either the full \$505 appellate filing fee or an updated *in forma pauperis* affidavit within 30 days after the date of this order. If Plaintiff needs additional time to file the required affidavit, he may request one 30-day extension of time from this Court.

If Plaintiff fails to file the required affidavit in a timely manner, the Court will deny leave to appeal *in forma pauperis* and assess the entire \$505 filing fee from his inmate trust account without regard to the installment procedures, and the Sixth Circuit may dismiss the appeal for failure to prosecute. However, if Plaintiff timely submits the necessary document and the Court finds that he is still indigent, then the Court will grant leave to appeal *in forma pauperis* and assess the filing fee in accordance with the installment procedures of 28 U.S.C. § 1915(b).

The Clerk is directed to send Plaintiff a copy of the prisoner *in forma pauperis* affidavit form along with this order. The Clerk is also directed to notify the Sixth Circuit of the entry of this order.

IT IS SO ORDERED.

s/ James D. Todd
JAMES D. TODD
UNITED STATES DISTRICT JUDGE