

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TERRANCE EDWARDS,

Plaintiff,

v.

ORDER

08-cv-352-bbc

JEREMY STANIEC, JOE BEAHM,
TRAVIS CAUL, JOHNATHAN
HAWKINS, and ERIC KRUEGER.

Defendants.

Plaintiff is presently pursuing an appeal following trial and return of a jury verdict in favor of defendants. On September 17, 2009, this court entered an order denying plaintiff's request to proceed in forma pauperis on appeal because three strikes have been recorded against him under 28 U.S.C. § 1915(g) and the issues he intended to raise on appeal did not qualify for the imminent danger exception to § 1915(g). On November 16, 2009, I issued an order denying plaintiff's motion for reconsideration of the September 17, 2009 order. However, on February 2, 2010, the Court of Appeals for the Seventh Circuit ruled that this court erred in certifying in the September order that plaintiff's appeal was filed in bad faith and in denying plaintiff leave to proceed in forma pauperis on appeal.

In fact, the reason I denied plaintiff denied leave to appeal was his three-strike status. It may be that the court of appeals disagreed with my determination that plaintiff had accumulated three strikes and used the term bad faith as shorthand for a finding that it was error to deny plaintiff leave to proceed on any basis. In any event, the February 2, 2010 order instructs this court to assess an initial partial filing fee for the appeal. From the trust fund account statement plaintiff submitted with his notice of appeal, I find that plaintiff owes \$3.04 as an initial partial payment of the \$455 filing fee. Plaintiff should show a copy of this order to institution officials to make sure they know they should send plaintiff's partial filing fee to this court.

ORDER

IT IS ORDERED that plaintiff may have until February 24, 2010, in which to submit a check or money order made payable to the clerk of court in the amount of \$3.04. If, by February 24, 2010, plaintiff fails to pay the initial partial payment or explain his failure to do so, then I will advise the court of appeals of his noncompliance in paying the assessment so that it may take whatever steps it deems appropriate with respect to this appeal.

Further, the clerk of court is requested to insure that the court's financial records reflect plaintiff's obligation to pay the \$3.04 initial partial payment and the remainder of the

\$455 fee in monthly installments.

Entered this 4th day of February, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge