

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

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JAMES T. KING,

Petitioner,

ORDER

v.

13-cv-537-wmc

R. WERLINGER, Warden,  
FCI - Oxford,

Respondent.

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Federal prisoner James T. King filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the sentence he received in *United States v. King*, Case No. 06-cr-50074-02 (N.D. Ill). On December 19, 2013, the court dismissed that petition for lack of jurisdiction. King has filed a notice of appeal from that decision and he requests leave to proceed *in forma pauperis*. It does not appear that King has filed his appeal in bad faith or that leave to proceed is otherwise precluded. Therefore, the court concludes that he is eligible to pursue an appeal without prepayment of the docketing fee. *See* Fed. R. App. P. 24(a)(3).

Having found that King is eligible to proceed *in forma pauperis*, the court must determine whether he has the ability to pay some portion of the \$505.00 appellate docketing fee. Although appeals taken in federal habeas corpus proceedings are not subject to filing-fee requirements found in the Prison Litigation Reform Act (the "PLRA"), 28 U.S.C. § 1915(b), a court may nonetheless require an indigent appellant in

a non-PLRA case to “pay a fee commensurate with their ability to do so.” *Walker v. O’Brien*, 216 F.3d 626, 638 n.5 (7th Cir. 2000) (citing *Longbehn v. United States*, 169 F.3d 1082, 1083-84 (7th Cir. 1999)). In other words, a habeas petitioner may be required to make an initial payment in order to have his appeal filed and to remit monthly installment payments thereafter until he has paid the full appellate filing fee. See *Webb v. Anderson*, 224 F.3d 649, 653 (7th Cir. 2000).

After considering his supporting documentation, the court finds that King has adequate financial resources to make a \$65.00 initial partial payment of the \$505.00 appellate filing fee in this case. For his appeal to proceed, King must remit this amount no later than March 6, 2014.

#### ORDER

IT IS ORDERED that:

1. The court certifies that the appeal filed by petitioner James T. King is not taken in bad faith for purposes of Fed. R. App. P. 24(a)(3).
2. King’s motion for leave to proceed *in forma pauperis* on appeal (Dkt. # 10) is GRANTED.
3. No later than March 6, 2014, King shall submit a check or money order made payable to the Clerk of Court in the amount of \$65.00 as an initial partial payment of the docketing fee for his appeal.

4. King is advised that, if he fails to tender the initial partial fee payment as directed, his appeal may be dismissed without further notice.

Entered this 6th day of February, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY  
District Judge