

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

STATE OF WISCONSIN, ex rel.
and TYRONE DAVIS SMITH,

Petitioners,

v.

STATE OF WISCONSIN COURT OF
APPEALS, DISTRICT ONE,

Respondents.

ORDER

Case No. 17-cv-49-bbc

Petitioner Tyrone Davis Smith seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner requests leave to proceed without prepayment of the filing fee. Petitioner has supported this request with an affidavit of indigency and a six-month trust account statement from the institution.

In determining whether to allow a prisoner to proceed without prepayment, this court uses the formula set forth in 28 U.S.C. § 1915(b)(1). Using information for the relevant time period from petitioner's trust fund account statement, I find that petitioner is able to pay the filing fee. Accordingly, I will deny petitioner's application for leave to proceed without prepayment of the filing fee. To proceed further on this habeas petition, petitioner must pay the \$5 filing fee. If petitioner fails to pay the fee by February 15, 2017, the petition, I will assume that petitioner wishes to withdraw this petition.

ORDER

IT IS ORDERED that:

1. Petitioner Tyrone Davis Smith's motion for leave to proceed without prepayment of the filing fee is DENIED. Petitioner has until February 15, 2017 in which to pay the \$5 filing fee.

2. If by February 15, 2017 petitioner fails to submit the \$5 filing fee, I will assume that petitioner wishes to withdraw this petition.

Entered this 24th day of January, 2017.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge