

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **Eric Joseph Martin v Marquette Branch Prison Warden**
Docket No. **319554**
L.C. No. **13-051955-AH**

E. Thomas Fitzgerald, Judge, acting under MCR 7.211(E)(2), orders:

The motion to waive fees pursuant to MCR 7.202(4) and MCR 7.205(B)(7) is DENIED because MCL 600.2963 mandates that a prisoner pursuing a civil action be liable for the filing fees. It is recognized that the plain language of MCL 600.2963(8) would preclude appellant from pursuing this appeal because of the outstanding fee he owes this Court in *Eric Martin v Jason Kelly*, Docket No. 240196. However, MCL 600.2963(8) cannot constitutionally be applied to preclude appellant from pursuing an appeal as to the circuit court order denying his petition for habeas corpus. *Smith v Bennett*, 365 US 708; 81 S Ct 895; 6 L Ed 2d 39 (1961).

Appellant is not required to pay an initial partial fee. However, for this appeal to be filed, **appellant shall submit a copy of this order and refile the pleadings within 21 days of the certification of this order**. By doing this, appellant becomes responsible for paying the \$375 filing fee and may not file another new civil appeal or original action in this Court until such time that either the Department of Corrections remits or appellant pays the entire outstanding balance due. MCL 600.2963(8). Failure to comply with this order shall result in the appeal not being filed in this Court and appellant not being responsible for paying the filing fee.

If appellant timely refiles the pleadings, monthly payments shall be made to the Department of Corrections in an amount of 50 percent of the deposits made to appellant's account until the payments equal the balance due of **\$375**. This amount shall then be remitted to this Court. Again, appellant may not file either a new civil appeal or an original action until appellant pays the entire outstanding balance due. MCL 600.2963(8).

The Clerk of this Court shall furnish two copies of ~~this~~ order to appellant and return appellant's pleadings with this order. *[Signature]*



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 10 2014

Date

[Signature of Jerome W. Zimmer Jr.]
Chief Clerk