

Court of Appeals, State of Michigan

ORDER

Christopher B Robinson v Carson City Correctional Facility Warden

Docket No. 328037

LC No. 14-015484-AH

Michael J. Talbot, Chief Judge, acting under MCR 7.211(E), orders:

On the Court's own motion, this original action is DISMISSED IN PART to the extent that plaintiff seeks mandamus relief because appellant filed this case even though he owes an outstanding balance in *Christopher Robinson v Dept of Corrections*, Docket Number 300367. Generally, a prisoner who is under the Department's jurisdiction cannot file another civil appeal or original action until the prisoner pays the outstanding balance owed in an earlier civil appeal or original action filed while under the Department's jurisdiction. MCL 600.2963(8). However, MCL 600.2963(8) cannot constitutionally be applied to bar plaintiff from seeking habeas corpus relief where it appears manifest that he cannot pay the outstanding balance in Docket Number 300367. *Smith v Bennett*, 365 US 708; 81 S Ct 895; 6 L Ed 2d 39 (1961). Thus, this case remains pending with regard to plaintiff's request for habeas corpus relief.

The motion to waive fees is DENIED because MCL 600.2963 mandates that a prisoner pursuing a civil action be liable for the filing fees. Plaintiff is not required to pay an initial partial fee. MCL 600.2963(7). However, for this case to be filed (as a habeas corpus action), plaintiff shall submit a copy of this order and refile the pleadings within 21 days of the date of this order. By doing this, plaintiff 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 plaintiff pays the entire outstanding balance due. MCL 600.2963(8). Failure to comply with this order shall result in this case not being filed in this Court and plaintiff not being responsible for paying the filing fee.

If plaintiff 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 his prisoner account until the payments equal the balance due of \$375. This amount shall then be remitted to this Court. Again,

plaintiff may not file either a new civil appeal or original action until he pays the entire outstanding balance due. MCL 600.2963(8).

The Clerk of this Court shall furnish two copies of this order to plaintiff and return plaintiff's pleadings with this order.



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

SEP 16 2015

Date


Chief Clerk