

No.

**IN THE
SUPREME COURT OF THE UNITED STATES**

CHARLES M. STEELE,

Petitioner

vs.

CHARLOTTE JENKINS, WARDEN

Respondent

ON PETITION FOR WRIT OF CERTIORARI

Charles M. Steele
Chillicothe Correctional Institution
Post Office Box 5500
Chillicothe, Ohio 45602

IN THE UNITED STATES SUPREME COURT OF THE UNITED STATES

CHARLES M. STEELE,

Petitioner-Appellant,

vs.

Lower Ct. Case No. 16-4205

CHARLOTTE JENKINS, Warden,
Chillicothe Correctional Institution, et. al.,

JURISDICTIONAL STATEMENT
Pursuant to Supreme Court Rule 15

QUESTION PRESENTED FOR REVIEW:

1. May the Sixth Circuit Court of Appeals sua sponte dismiss a Plaintiff's Appeal for not paying the filing fees, where documentation clearly showed that the inmate did not have the sufficient funds to pay such a fee, is the Plaintiff entitled to relief from the Judgment?

LIST OF PARTIES IN COURT BELOW:

- (a) CHARLES M. STEELE, et al., Plaintiff, v. WARDEN CHARLOTTE JENKINS, et al.,
Defendants.

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JURISDICTIONAL STATEMENT

The Judgment of the United States Court of Appeals for the Sixth Circuit was entered on May 15th, 2018, the jurisdiction of this Court is invoked under Article III(1)(c) Appellate Jurisdiction of the United States Supreme Court.

CONSTITUTIONAL PROVISIONS AND STATUES INVOLVED

1. The First Amendment, United Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2. The Fifth Amendment, United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

3. The Statues under which Plaintiff sought relief was 28 U.S.C. 1983

STATEMENT OF THE CASE

- I. **COURSE OF PROCEEDINGS IN SECTION 1983 CASE NOW BEFORE THIS COURT.**

ORDER AND REPORT AND RECOMMENDATION DISTRICT COURT

Plaintiffs, two prisoners currently incarcerated at Chillicothe Correctional Institution ("Institution"), have filed the instant lawsuit alleging violations of their constitutional rights. (Doc. 1-2). They have also filed Motions for Leave to Proceed *In Forma Pauperis* (Docs. 1, 4, 5), and a Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 2). This matter is now before the Court to screen the case pursuant to 28 U.S.C. § 1915A. For the following reasons, ***the Court GRANTS Plaintiffs' Motions for Leave to Proceed In Forma Pauperis*** (Docs. 1, 4, 5); **RECOMMENDS DISMISSING** the complaint (Doc. 1-2); and **RECOMMENDS DENYING** the Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 2).

On September 1, 2016, the United States Magistrate Judge issued an Order and Report and Recommendation recommending that Plaintiffs Charles Steele and Jerome Royster's Motions for Leave to Proceed in Forma Pauperis is granted; that Plaintiffs' Complaint is dismissed; and that Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction is

denied. (See Order and Report and Recommendation, Doc. 6). The parties were advised of their right to object to the Order and Report and Recommendation. This matter is now before the Court on Plaintiff Steele's Objections to the Order and Report and Recommendation. (See Doc. 7). The Court will consider the matter *de novo*. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b) (3).

The Order and Report and Recommendation, Document 6, is ADOPTED and AFFIRMED. Plaintiffs Charles Steele and Jerome Royster's Motions for Leave to Proceed In Forma Pauperis is GRANTED; Plaintiffs' Complaint is hereby DISMISSED; and Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction is DENIED.

The Clerk shall remove Documents 2, 6, and 7 from the Court's pending motions list. The Clerk shall terminate this case. DATED October 6, 2016

At this stage Plaintiff-Appellant filed an Appeal to the United States Court of Appeals for the Sixth Circuit, with all proper documentation to perfect an Appeal to that Court, October 20th, 2016. since plaintiff had been granted In Forma Pauperis Statues at the District Court Level.

Plaintiff-Appellant filed a Brief to the Court of Appeals dated

On April 20th, 2017, An Order was issued stating that Plaintiff did qualify for informa pauperis status on appeal from a financial standpoint, but denied plaintiff's Motion because Plaintiff's appeal is not taken in good faith.

Plaintiff again filed the Proper documentation to the Sixth Circuit Court of Appeals to Proceed Informa Pauperis, in an Order dated November 30th, 2017, and Plaintiff was Ordered to pay the entire filing fee to the District Court, although his documentation from his Inmate Trust Account clearly showed that he was unable to pay the fees in entirety.

Appellant Requested a Reconsideration of that Order, it was denied on April 17th, 2018

Appellant was again Order to pay the filing fee by April 1st, 2018.

On May 15th, 2018, Appellant's cause was dismissed for want of prosecution for not paying the filing fee.

II. THE FEDERAL COURT OF APPEALS FOR THE SIXTH CIRCUIT HAS DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT

On December 1, 1998, amendments to Rule 24 became effective. Rule 24(a)(5) provides that:

A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district **6 court's statement of reasons for its action. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

The amendments to Rule 24 have once again created a conflict with § 1915(a)(3) which necessitates our reexamination of *Floyd*. Consistent with our discussion in *Floyd* concerning Congress's authority to regulate court procedures, and pursuant to the directives of the Rules Enabling Act, we must abandon our holding in *Floyd* that once the district court has certified that an appeal from a non-prisoner would not be taken in good faith, the litigant may not proceed in forma pauperis on appeal. *Floyd*, 105 F.3d at 278.

As Rule 24(a)(5) explicitly allows a party to file a motion to proceed on appeal in forma pauperis in the court of appeals, within thirty days after being notified of a denial by the clerk of the district court, the Rules Enabling Act now dictates that a non-prisoner has the ability to file a pauper motion with this court once a pauper motion has been denied by the district court. Thus, under Rule 24(a), a non-prisoner who desires to appeal in forma pauperis must first file a motion seeking such relief with the district court. *See Fed. R. App. P. 24(a)(1)*. With that motion, the individual must attach an affidavit showing in detail the information prescribed by Form 4 of the Appendix of Forms to the Federal Rules of Appellate Procedure: the individual's ability to pay or give security for fees and costs; the right to redress; and the issues the party intends to present on appeal. *See id.*

After this required information has been filed, the district court must ascertain both the individual's pauper status and the merits of the appeal. If the district court determines that the individual is not a pauper, that the appeal is not taken in good faith, or that the individual is not otherwise entitled to pauper status, *see Fed. R. App. P. 24(a)(4)*, the district court must state its decision in writing, *see Fed. R. App. P. 24(a)(2)*, and then immediately notify the parties of its decision. *See Fed. R. App. P. 24(a)(4)*.

If the party was permitted to proceed in forma pauperis in the district court, the party may proceed on appeal in forma pauperis without further authorization unless the district court certifies in writing that an appeal would not be taken in [*8] good faith, or the party is not otherwise entitled to proceed as a pauper. *See Fed. R. App. P. 24(a)(3)*.

If the district court denies the individual leave to proceed in forma pauperis on appeal, the party may file, within thirty days after service of the district court's decision as prescribed for by Fed. R. App. P. 24(a)(4), a motion with this court for leave to proceed as a pauper on appeal. The party's motion must include a copy of the affidavit filed in the district court and the district court's statement as to its reasons for denying pauper status on appeal. *See Fed. R. App. P. 24(a)(5)*.

An individual now has the ability to move for pauper status before this court by complying with the procedures set forth in Rule 24(a). If the individual does not file a motion within thirty days of receiving notice of the district court's decision as required by Rule 24(a)(5), or fails to pay the required fee within this same time period, the appeal will be dismissed for want of prosecution.

Appellant did file in accordance with Rule 24(a), but the Court of Appeals of the Sixth Circuit still dismissed appellant's case for want of prosecution.

§ 1915. Proceedings in forma pauperis provides:

- (b) (1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—
- (4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

THE COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN A WAY IN COMFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT

§ 1915(b)(4) Proceedings in forma pauperis specifically states

- (b) (1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—
- (4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

ARGUMENT FOR ALLOWANCE OF APPEAL

I. THE COURT OF APPEALS ERRED IN DENYING APPELLANT THE RIGHT TO INFORM PAUPERIS STATUS BY REQUIRING THAT APPELLANT PAY THE ENTIRE FILING FEE

The Prison Litigation Reform Act of 1995 provides that prisoners qualified to proceed *in forma pauperis* (IFP) must nonetheless pay an initial partial filing fee, set as "20 percent of the greater of" the average monthly deposits in the prisoner's account or the average monthly balance of [*628] the account over the preceding six months. 28 U.S.C. §1915(b) (1). They must then pay the remainder of the fee in monthly installments of "20 percent of the preceding month's income credited to the prisoner's account." §1915(b) (2). The initial partial fee is assessed on a per-case basis, i.e., each time the prisoner files a lawsuit. The initial payment may not be exacted if the prisoner has no means to pay it, §1915(b)(4), and no monthly installments are required unless the prisoner has more than \$10 in his

account, §1915(b)(2). In contest here is the calculation of subsequent monthly installment payments when more than one fee is owed.

Section 1915s text and context support the per-case approach. Just as §1915(b)(1) calls for assessment of "an initial partial filing fee" each time a prisoner "brings a civil action or files an appeal" (emphasis added), so its allied provision, §1915(b)(2), calls for monthly 20 percent payments simultaneously for each action pursued. Section 1915(b)(3), which imposes a ceiling on fees permitted "for the commencement of a civil action or an appeal" (emphasis added), and §1915(b)(4), which protects the right to bring "a civil action or appeal[i] a . . . judgment" (emphasis added), confirm that subsection (b) as a whole is written from the perspective of a single case. Pp. 193 L. Ed. 2d, at 502-503.

761 F. 3d 1, 411 U.S. App. D.C. 380.

THE QUESTION RAISED IN THIS APPEAL ARE IMPORTANT AND UNRESOLVED

The Sixth Circuit Court of Appeals has decided that appellant could not proceed on appeal without paying the entire filing fee, this essentially denies appellant his rights to redress his grievance well before the Court has the chance to decide whether his claims are meritorious or lacking merit, appellant definitely asserts that his claims have merit, but the decision of the Lower forecloses his chance to prove his claims.

CONCLUSION

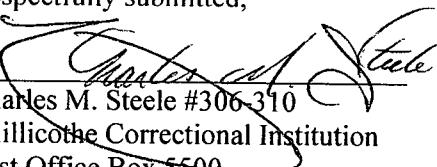
The Judgment or Order of the Court of Appeals Sixth Circuit, is a departure from decisions of this Court and Other cases decided by the Sixth Circuit, As such, it represent a breach in the Wall erected by the First and Fifth Amendments to the United States Constitutions, designed to assure that all court are open to redress grievances and that Due Process is guaranteed to all of its citizens.

The request for Appeal should be granted.

Dated:

June 21st, 2018

Respectfully submitted,


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