

S.D.N.Y.-W.P.
16-cv-1730
Karas, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of May, two thousand nineteen.

Present:

Gerard E. Lynch,
Raymond J. Lohier, Jr.,
Circuit Judges,
Brian M. Cogan,*
District Judge.

Lionel McCray,

Plaintiff-Appellant,

v.

18-1144

Superintendent William Lee, et al.,

Defendants-Appellees,

Watch Commander John Doe,

Defendant.

Appellant moves for appointment of counsel. Upon due consideration, it is hereby ORDERED that the motion is GRANTED and counsel shall be appointed from this Court's pro bono panel. Counsel is hereby instructed to brief, among other issues: whether the district court improperly dismissed Appellant's deprivation of exercise claim and whether Appellant's slip-and-fall claim is cognizable under the Eighth Amendment. Counsel is directed to file a scheduling notification within 14 days of the date of entry of the order appointing counsel pursuant to Second Circuit Local Rule 31.2.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe

* Judge Brian M. Cogan, of the United States District Court for the Eastern District of New York, sitting by designation.

APPENDIX E

S.D.N.Y.-W.P.
16-cv-1730
Karas, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of August, two thousand nineteen.

Present:

José A. Cabranes,
Peter W. Hall,
Denny Chin,
Circuit Judges.

Lionel McCray,

Plaintiff-Appellant,

v.

18-1144

Superintendent William Lee, et al.,

Defendants-Appellees,

Watch Commander John Doe,

Defendant.

Kevin King, pro bono counsel for Appellant, moves to withdraw as counsel per Appellant's request. Upon due consideration, it is hereby ORDERED that the motion to withdraw is GRANTED. It is further ORDERED that pro bono counsel is instead appointed as amicus curiae and shall file an amicus brief addressing the issues outlined in the Court's previous order appointing counsel. The amicus brief shall be due within 30 days of this order, and any response brief by Appellees shall be due 30 days thereafter. The merits panel will consider all of Appellant's pro se briefs and pending motions in addition to the amicus brief in determining the appeal.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe


APPENDIX F

S.D.N.Y.-W.P.
16-cv-1730
Karas, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the twenty-fourth day of October, two thousand nineteen.

Present:

Amalya L. Kearse,
Barrington D. Parker,
Richard J. Sullivan,
Circuit Judges.

Lionel McCray,

Plaintiff-Appellant,

v.

18-1144

Superintendent William Lee, et al.,

Defendants-Appellees,

Watch Commander John Doe,

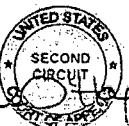
Defendant.

Appellant, pro se, moves (in two nearly identical motions) for a stay of proceedings and objects to the appointment of amicus curiae. Upon due consideration, it is hereby ORDERED that the motions for a stay are DENIED because Appellant has failed to show that a stay is warranted. *See Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 97 (2d Cir. 2012) (“The person seeking a stay [of proceedings] bears the burden of establishing its need.” (internal quotation marks omitted)); *Citrus Mktg. Bd. of Israel v. J. Lauritzen A/S*, 943 F.2d 220, 225 (2d Cir. 1991) (stating that federal courts have “inherent power” to stay proceedings “to control the disposition of the cases on its docket with economy of time and effort”); *cf. SEC v. Citigroup Global Mkts. Inc.*, 673 F.3d 158, 162 (2d Cir. 2012) (outlining factors to consider when deciding if a stay of district court

APPENDIX F

proceedings pending appeal was warranted). The merits panel will address: Appellant's objections to the amicus brief; arguments raised in Appellant's pro se brief and reply; and (3) Appellant's pending motions to enforce a consent decree, to hold the Appellees in contempt, and to issue a "writ of sequestration." *See* 2d Cir. 18-1144, doc. 134 (Mot. Order). Briefing is complete and the appeal is ready to be calendared.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LIONEL McCRAY,

Plaintiff,

-against-

SUPERINTENDENT WILLIAM LEE;
WATCH COMMANDER JOHN DOE;
SERGEANT KUTZ,

Defendants.

16-CV-1730 (UA)

ORDER GRANTING IFF
APPLICATION IN PRISONER CASE

LORETTA A. PRESKA, Chief United States District Judge:

Plaintiff's application for leave to proceed without prepayment of fees is granted. A prisoner bringing a civil action is required to pay the full \$350 filing fee even when proceeding *in forma pauperis*, that is, without prepayment of fees. *See* 28 U.S.C. § 1915(b)(1). The Court must collect, when funds exist in a prisoner's facility account, an initial partial filing fee¹ plus monthly payments. The agency having custody of the prisoner shall forward payments from the prisoner's facility account to the Clerk of Court each time the amount in the account exceeds \$10, until the filing fee is paid. § 1915(b)(2); *see also* In the Matter of the Prison Litigation Reform Act, Second Amended Standing Order, M10-468 (S.D.N.Y. May 26, 2010) (requiring agencies to calculate and remit the statutory fees for litigants in their custody).

Plaintiff has executed a prisoner authorization that authorizes the agency having custody of Plaintiff, or any agency to which Plaintiff is transferred, to send a certified copy of Plaintiff's facility account statements for the past six months to this Court. The prisoner authorization

¹ The initial partial filing fee is 20 percent of the greater of – (A) the average monthly deposits to the prisoner's facility account; or (B) the average monthly balance in the prisoner's facility account for the 6-month period immediately preceding the filing of the complaint. 28 U.S.C. § 1915(b)(1).

further authorizes the agency to calculate the amounts specified by 28 U.S.C. § 1915, to deduct those amounts from Plaintiff's facility account (or institutional equivalent), and to disburse those amounts to this Court.

Accordingly, the Clerk of Court is directed to send a copy of this order and the prisoner authorization to the agency having custody of Plaintiff. That agency is directed to forward copies of Plaintiff's facility account statements for the past six months and to disburse the payments required under 28 U.S.C. § 1915 to the United States District Court for the Southern District of New York and to include the above docket number on the disbursement before sending it to the Court. If Plaintiff is transferred to another facility, the current facility shall provide a copy of this order to the facility to which Plaintiff is transferred. The Clerk of Court is also directed to send a copy of this order to Plaintiff.

Finally, it is Plaintiff's obligation to promptly submit a written notification to the Court if Plaintiff's address changes, and the Court may dismiss the action if Plaintiff fails to do so.

SO ORDERED.

Dated: April 7, 2016
New York, New York


LORETTA A. PRESKA

Chief United States District Judge