

20-5271
NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

Supreme Court, U.S.
FILED

JUL 15 2020

OFFICE OF THE CLERK

TOSHI EDWARD WILLINGHAM,

Petitioner,

v.

CATHERINE BAUMAN,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

AFFIDAVIT IN SUPPORT OF MOTION

Toshi Edward Willingham #970310
Petitioner-Appellant, *Pro Se*
Alger Correctional Facility
N6141 Industrial Park Drive
Munising, Michigan 49862
(906) 387-5000

***NOTICE:** This document was prepared with the assistance of a non-attorney prisoner assigned to the Legal Writer Program with the Michigan Department of Corrections.

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MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner, Toshi Edward Willingham respectfully asks this Honorable Court, pursuant to Supreme Court Rule 39, for leave to proceed *in forma pauperis* so that he may file the accompanying Petition for Writ of Certiorari with this Court. Petitioner has previously been granted leave to proceed *in forma pauperis* in this case in the United States District Court for the Western District of Michigan and by that court for the purposes of appeal. See Exhibit A. As per his affidavit, Petitioner is currently incarcerated in a state prison and the only income he receives is gifts/donations from family members and friends. See Exhibit B.

Respectfully Submitted,

Date: 7-15-20

Toshi Willingham
s/Toshi Edward Willingham #970310
Petitioner-Appellant, *Pro Se*
Alger Correctional Facility
N6141 Industrial Park Drive
Munising, Michigan 49862
(906) 387-5000

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

TOSHI EDWARD WILLINGHAM,

Petitioner,

Case No. 2:19-cv-221

v.

Honorable Paul L. Maloney

CATHERINE BAUMAN,

Respondent.

ORDER REGARDING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

This is a habeas corpus action brought by a state prisoner under 28 U.S.C. § 2254. On December 4, 2019, the Court entered a judgment denying the petition. (ECF No. 6.) The Court also denied Petitioner a certificate of appealability. (ECF No. 5.) Petitioner now has filed a notice of appeal. Petitioner is seeking leave to proceed on appeal *in forma pauperis*. (ECF No. 8.)

Federal Rule of Appellate Procedure 3(e) provides that the appellant must pay all required fees at the time a notice of appeal is filed with the district court. The docketing fee for a case on appeal is \$500.00. *See* 28 U.S.C. § 1913; 6 Cir. I.O.P. 3; Court of Appeals Miscellaneous Fee Schedule § 1 (Sept. 1, 2018). In addition, under 28 U.S.C. § 1917, a \$5.00 filing fee must be paid to the district court. Petitioner has failed to pay the required fees.

A prisoner who is unable to pay the required filing fees may seek leave to appeal in a § 2254 action *in forma pauperis* pursuant to Rule 24(a) of the Federal Rules of Appellate Procedure. *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997). Petitioner has substantially complied with Rule 24(a), which requires him to file a motion for leave to proceed *in forma pauperis* and an affidavit showing his inability to pay the required fees (as prescribed by Form 4

of the Appendix of Forms), his belief that he is entitled to redress, and a statement of the issue he intends to present on appeal. Petitioner proceeded *in forma pauperis* in this Court. He may continue that status on appeal if the documents establish his indigence unless the Court certifies his appeal would not be taken in good faith. 28 U.S.C. § 1915(a); Fed. R. App. P. 24(a)(3).

Petitioner's documents establish his indigence and the Court did not certify that an appeal would not be filed in good faith. Therefore, Petitioner may proceed *in forma pauperis* on appeal without pre-paying or giving security for fees and costs. Fed. R. App. P. 24(a)(2). Petitioner is not required to pay the \$505.00 fee for filing an appeal. *See Kincade v. Sparkman*, 117 F.3d 949, 951 (6th Cir. 1997) (holding that 28 U.S.C. § 1915(b) provides that the fee provisions of the Prison Litigation Reform Act of 1995 do not apply to an appeal from a decision on an application for habeas relief).

IT IS ORDERED that Petitioner's motion for leave to proceed *in forma pauperis* on appeal (ECF No. 8) is **GRANTED**.

Dated: January 21, 2020

/s/ Maarten Vermaat

Maarten Vermaat
United States Magistrate Judge

EXHIBIT B

**AFFIDAVIT OR DECLARATION IN SUPPORT OF MOTION FOR LEAVE TO
PROCEED *IN FORMA PAUPERIS***

I, **Toshi Edward Willingham**, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Self-employment	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Interest and dividends	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Gifts	\$ <u>33.33</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Alimony	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Child Support	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Unemployment payments	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Other (specify):	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Total monthly income:	\$ <u>33.33</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
None			\$
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
			\$
			\$
			\$

4. How much cash do you and your spouse have? \$

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
Prison	Trust	\$00.29	\$ 0
		\$	\$ 0
		\$	\$ 0

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value \$ 0

☐ Other real estate
Value \$ 0

☐ Motor Vehicle #1
Year, make & model
Value \$ 0

☐ Motor Vehicle #2
Year, make & model
Value \$ 0

☐ Other assets
Description
Value \$ 0

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
_____	\$ <u>0</u> _____	\$ <u>0</u> _____
_____	\$ <u>0</u> _____	\$ <u>0</u> _____
_____	\$ <u>0</u> _____	\$ <u>0</u> _____

7. State the persons who rely on your spouse for support.

Name	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>0</u> _____	\$ <u>0</u> _____
Are real estate taxes included? <input type="checkbox"/> yes <input type="checkbox"/> no		
Is property insurance included? <input type="checkbox"/> yes <input type="checkbox"/> no		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>0</u> _____	\$ <u>0</u> _____
Home maintenance (repairs and upkeep)	\$ <u>0</u> _____	\$ <u>0</u> _____
Food	\$ <u>0</u> _____	\$ <u>0</u> _____
Clothing	\$ <u>0</u> _____	\$ <u>0</u> _____
Laundry and dry-cleaning	\$ <u>0</u> _____	\$ <u>0</u> _____
Medical and dental expenses	\$ <u>0</u> _____	\$ <u>0</u> _____

	You	Your Spouse
Transportation (not including motor vehicle payments)	\$ 0	\$ 0
Recreation, entertainment, newspapers, magazines, etc.	\$ 0	\$ 0
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ 0	\$ 0
Life	\$ 0	\$ 0
Health	\$ 0	\$ 0
Motor Vehicle	\$ 0	\$ 0
Other: _____	\$ 0	\$ 0
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ 0	\$ 0
Installment payments		
Motor Vehicle	\$ 0	\$ 0
Credit card(s)	\$ 0	\$ 0
Department store(s)	\$ 0	\$ 0
Other: _____	\$ 0	\$ 0
Alimony, maintenance, and support paid to others	\$ 0	\$ 0
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0	\$ 0
Other (specify): _____	\$ 0	\$ 0
Total monthly expenses:	\$ 0	\$ 0

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ yes ☒ no

If yes, describe on an attached sheet.

10. Have you paid - or will you be paying - an attorney any money for services in connection with this case, including the completion of this form? ☐ yes ☒ no

If yes, how much? \$ 0

If yes, state the attorney's name, address, and telephone number: **N/A**

11. Have you paid - or will you be paying - anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ yes ☒ no

If yes, how much? \$ 0

If yes, state the person's name, address, and telephone number: **N/A**

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I am an indigent prisoner without a prison job and cannot afford the filing fee. I have attached to this filing; my notarized certificate of account activity and account statement from the prison business office.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 7-15-20

Toshi Willingham
Toshi Edward Willingham #970310
Petitioner, *Pro Se*
Alger Correctional Facility
N6141 Industrial Park Drive
Munising, Michigan 49862
(906) 387-5000

Michigan Department Of Corrections
Trust Account Statement
For the period 12/24/2019 to 06/24/2020

MDOC Nbr.: 970310	Name: Willingham, Toshi Edward	Current Lock Loc.: M:106:Top:A	
Birth Date: 11/26/1991	Location: ALGER CORRECTIONAL FACI	Jurisdiction Dates: 11/04/2015	Active: Yes
Current Balance: .29	Hold Balance: .00	Account Dates: 02/20/2019	A/C. Status: Active

Sub Account Details

Account Code	Account Name	Balance As of 12/24/2019	Balance As of 06/24/2020
Trust-Alger Facility Caseload			
2101	Offender Funds	0.75	41.39
2198	Freeze	0.00	0.00
Trust-St. Louis Facility Caseload			
2101	Offender Funds	0.00	0.00
2198	Freeze	0.00	0.00
Trust-SMR Jackson Caseload			
2101	Offender Funds	0.00	0.00
2198	Freeze	0.00	0.00
Trust-Chippewa Caseload			
2101	Offender Funds	0.00	0.00
2198	Freeze	0.00	0.00

Transaction Details

GJ No.	Date	Description	Debit	Credit
Trust-Alger Facility Caseload				
92082647	01/02/2020	LPOSPBF Legal Postage Disbursement (PBF)	1.60	
		2101 Offender Funds	0.75	
		2582 Postage (PBF) Payable - Direct		0.75
		<i>Narration: Batch: 2559852, Ref:lmf exp leg clk of ct us dist -</i>		
92119951	01/06/2020	LCSTD Legal Copies Disbursement (State)	2.40	
		2101 Offender Funds	0.00	
		2581 Copies (State) Payable - Direct		0.00
		<i>Narration: Batch: 2561051, Ref:lmf legal copies -</i>		
93937732	04/20/2020	LCSTD Legal Copies Disbursement (State)	12.60	
		2101 Offender Funds	0.00	
		2581 Copies (State) Payable - Direct		0.00
		<i>Narration: Batch: 2595001, Ref:LMF LEGAL COPIES -</i>		
93945833	04/21/2020	LPOSPBF Legal Postage Disbursement (PBF)	3.20	
		2101 Offender Funds	0.00	
		2582 Postage (PBF) Payable - Direct		0.00
		<i>Narration: Batch: 2595235, Ref:lmf reg leg d nessel attn gen -</i>		
93945834	04/21/2020	LPOSPBF Legal Postage Disbursement (PBF)	3.20	
		2101 Offender Funds	0.00	
		2582 Postage (PBF) Payable - Direct		0.00
		<i>Narration: Batch: 2595235, Ref:lmf reg leg us crt appeals -</i>		
93977667	04/24/2020	GTL GTL EFT Receipts	100.00	
		1121 GTL EFT Receipts	100.00	
		2568 Court Ordered Charges Payable		25.00
		2508 Postage (PBF) Payable		0.85
		2507 Copies (State) Payable		2.40
		2507 Copies (State) Payable		12.60
		2508 Postage (PBF) Payable		3.20
		2508 Postage (PBF) Payable		3.20

Michigan Department Of Corrections
Trust Account Statement
For the period 12/24/2019 to 06/24/2020

MDOC Nbr.: 970310	Name: Willingham, Toshi Edward	Current Lock Loc.: M:106:Top:A	Active: Yes
Birth Date: 11/26/1991	Location: ALGER CORRECTIONAL FACI	Jurisdiction Dates: 11/04/2015	
Current Balance: .29	Hold Balance: .00	Account Dates: 02/20/2019	A/C. Status: Active

GJ No.	Date	Description	Debit	Credit
Trust-Alger Facility Caseload				
		2101 Offender Funds		52.75
		<i>Narration: Batch: 2596491, Ref:SPEARS,DAWNN-04/23/2020</i>		
94003181	04/27/2020	LSD Legal Supplies Disbursement	.58	
		2101 Offender Funds	0.58	
		2590 Miscellaneous Payable - Direct		0.58
		<i>Narration: Batch: 2597136, Ref:LMF LEGAL SUPP. 2 LGE. ENVEL. -</i>		
94027988	04/30/2020	CRT Commissary Regular Transaction	49.96	
		2101 Offender Funds	49.96	
		2501 Payable to Commissary		49.96
		<i>Narration: Batch: 2598167, Ref:103230028-Keefe Debit -</i>		
94120609	05/06/2020	GTL GTL EFT Receipts	50.00	
		1121 GTL EFT Receipts	50.00	
		2101 Offender Funds		50.00
		<i>Narration: Batch: 2599622, Ref:SPEARS,DAWNN-05/05/2020</i>		
94168078	05/11/2020	PCD Phone Credit Disbursement	10.00	
		2101 Offender Funds	10.00	
		2596 Phone Credit Payable		10.00
		<i>Narration: Batch: 2601088, Ref:LMF PHONE -</i>		
94202946	05/14/2020	CRT Commissary Regular Transaction	40.82	
		2101 Offender Funds	40.82	
		2501 Payable to Commissary		40.82
		<i>Narration: Batch: 2602251, Ref:103252924-Keefe Debit -</i>		
95033981	06/15/2020	GTL GTL EFT Receipts	50.00	
		1121 GTL EFT Receipts	50.00	
		2101 Offender Funds		50.00
		<i>Narration: Batch: 2611216, Ref:SPEARS,DAWNN-06/13/2020</i>		
95077457	06/17/2020	PCD Phone Credit Disbursement	10.00	
		2101 Offender Funds	10.00	
		2596 Phone Credit Payable		10.00
		<i>Narration: Batch: 2612173, Ref:LMF PHONE -</i>		
Total Receipts:				200.00
Total Disbursements:				134.36

FEDERAL COURT - CIVIL ACTION

Prisoner-Plaintiff/Petitioner/Appellant name and number

Toshi Edward Willingham

Defendant's/Respondent's/Appellee's name

Catherine S Bauman

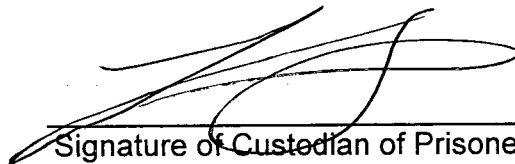
V

CERTIFICATE OF PRISONER INSTITUTIONAL/TRUST FUND ACCOUNT ACTIVITY

I am employed by the Michigan Department of Corrections at the facility identified below, at which the prisoner identified as the Plaintiff/Petitioner/Appellant is currently incarcerated.

Attached is a computer printout which accurately reflects the current spendable balance and all activity within this prisoner's account during the preceding six months or, if the prisoner has been incarcerated for less than six months, for the period of incarceration. The Credits to Offender Funds represent deposits and the Debits to Offender Funds represent withdrawals to the prisoners account. The attached printout reflects, for the reported period, an average monthly account deposit (i.e., total deposits divided by number of months) of \$ 33.33 , an average monthly account balance (i.e., total deposits minus total withdrawals divided by number of months) of \$ 10.94 . There is a current spendable account balance of \$ 0.29 .

Date: 6/25/2020



Signature of Custodian of Prisoner Institutional/Trust Fund Account

L. Sutinen, Accounting Technician
Alger Correctional Facility