
No.

in the
Supreme Court
of the
United States

Term,

DOUGLAS HARRIE STEWART,
Petitioner,

vs.

CATHLEEN STODDARD, WARDEN,
Respondent.

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court:

United States Court of Appeals for the Sixth Circuit

A copy of the Order Granting Leave to Proceed *In Forma Pauperis* on Appeal, a copy of the Order granting Petitioner's motion to appoint counsel in his appeal, and a copy of the Ruling Letter appointing counsel are appended to this motion.

Respectfully Submitted,

/s/ Kellie Ann Kulka

Kellie Ann Kulka

GRAYDON HEAD & RITCHEY LLP

312 Walnut Street, Suite 1800

Cincinnati, OH 45202

Phone: (513) 629-2714

Fax: (513) 333-4348

Email: kkulka@graydon.law

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent this 22nd day of October, 2020, by U.S. mail, to the Office of the Solicitor General of Michigan, as well as through electronic filing.

/s/ Kellie Ann Kulka

Kellie Ann Kulka

Counsel for Petitioner

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

I, **Douglas Stewart**, 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 any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse (N/A)	You	Spouse (N/A)
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>0</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, 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>0</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.)

Incarcerated since 2011.

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
			\$
			\$

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
N/A			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ 0.00
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings) Amount you have Amount your spouse has

N/A	\$	\$
	\$	\$
	\$	\$

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

☐ Home
Value None

☐ Other real estate
Value None

☐ Motor Vehicle #1
Year, make & Model None
Value _____

☐ Motor Vehicle #2
Year, make & Model _____
Value None

☐ Other assets

Description None

Value

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

N/A

\$ 0

\$ 0

\$ 0

\$ 0

\$ 0

\$ 0

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name

Relationship

Age

None

Year	Number of people (millions)
1990	60
1995	70
2000	68
2005	75
2010	85

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.

Rent or home-mortgage payment
(include lot rented for mobile home)

You
 \$ 0

Your spouse
\$ 0

Are real estate taxes included? ☐ Yes ☐ No

Is property insurance included? ☐ Yes ☐ No

Utilities (electricity, heating fuel,
Water, sewer, and telephone)

\$ 0

\$\underline{\hspace{1.5cm}0\hspace{1.5cm}}\$

Home maintenance (repairs and upkeep)

\$ 0

\$ 0

Food

\$ 0

\$ 0

Clothing

\$ 0

\$ 0

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)	\$ <u>0</u>	\$ <u>0</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u>0</u>

Insurance (not deducted from wages or included in mortgage payments)

Homeowner's or renter's	\$ <u>0</u>	\$ <u>0</u>
Life	\$ <u>0</u>	\$ <u>0</u>
Health	\$ <u>0</u>	\$ <u>0</u>
Motor Vehicle	\$ <u>0</u>	\$ <u>0</u>
Other: _____	\$ <u>0</u>	\$ <u>0</u>

Taxes (not deducted from wages or included in mortgage payments)

(specify): _____	\$ <u>0</u>	\$ <u>0</u>
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Installment payments

Motor Vehicle	\$ <u>0</u>	\$ <u>0</u>
Credit Card(s)	\$ <u>0</u>	\$ <u>0</u>
Department store(s)	\$ <u>0</u>	\$ <u>0</u>
Other: _____	\$ <u>0</u>	\$ <u>0</u>

Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>0</u>	\$ <u>0</u>
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Other (specify): _____	\$ <u>0</u>	\$ <u>0</u>
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Total monthly expenses:	\$ <u>0</u>	\$ <u>0</u>
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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? _____

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? _____

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 presently incarcerated, and have no viable means of support financially.

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

Executed on: _____, 2020

(Signature)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DOUGLAS HARRIE STEWART,

Petitioner,

Case No. 1:14-cv-00586

v.

Honorable Robert J. Jonker

CATHLEEN STODDARD,

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 January 23, 2018, the Court entered a judgment denying the petition. (ECF No. 13). The Court also denied Petitioner a certificate of appealability. (ECF No. 12). Petitioner now has filed a notice of appeal. (ECF No. 16). Petitioner is seeking leave to proceed on appeal *in forma pauperis*. (ECF No. 20).

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 (Dec. 1, 2013). 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 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 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. The documents show that Petitioner is unable to pay the filing and docket fees required for an appeal. In light of his indigence, 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). Therefore, Petitioner is not required to pay the \$505.00 fee for filing an appeal. *See Kincade*, 117 F.3d at 951 (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).¹

IT IS ORDERED that Petitioner's motion for leave to proceed *in forma pauperis* on appeal (ECF No. 20) is **GRANTED**.

Dated: April 17, 2018

/s/ Phillip J. Green
 PHILLIP J. GREEN
 United States Magistrate Judge

¹This Court notes that under 28 U.S.C. § 2254 and Rule 24(a)(3) of the Federal Rules of Appellate Procedure, it is not required to address whether the instant appeal is taken in good faith because Petitioner did not proceed *in forma pauperis* in the district court. *See* 28 U.S.C. § 2254; FED. R. APP. P. 24(a)(3).

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: May 01, 2019

Mr. Douglas Harrie Stewart
Saginaw Correctional Facility
9625 Pierce Road
Freeland, MI 48623

Mr. John S. Pallas
Office of the Attorney General of Michigan
P.O. Box 30217
Lansing, MI 48116

Re: Case No. 18-1204, *Douglas Stewart v. Thomas Winn*
Originating Case No. : 1:14-cv-00586

Dear Mr. Stewart and Counsel:

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Robin L. Johnson
Case Manager
Direct Dial No. 513-564-7039

cc: Mr. Thomas Dorwin

Enclosure

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DOUGLAS HARRIE STEWART,

Petitioner-Appellant,

V.

THOMAS WINN, Warden,

Respondent-Appellee.

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FILED

May 01, 2019

DEBORAH S. HUNT, Clerk

ORDER

Douglas Harrie Stewart, a Michigan prisoner proceeding pro se, moves the court to appoint counsel in his appeal from the district court's judgment denying his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. Upon consideration, the motion is **GRANTED**. *See* 18 U.S.C. § 3006A(a)(2). After counsel is appointed, the clerk shall establish a new briefing schedule.

ENTERED BY ORDER OF THE COURT

Wm. L. Hunt

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: June 21, 2019

Ms. Kellie A. Kulka
Graydon Head & Ritchey
312 Walnut Street
Suite 1800
Cincinnati, OH 45202

Re: Case No. 18-1204, *Douglas Stewart v. Thomas Winn*
Originating Case No. : 1:14-cv-00586

Dear Counsel,

This confirms your appointment to represent the defendant in the above appeal under the Criminal Justice Act, 18 U.S.C. § 3006A.

You must file your appearance form and order transcript within 14 days of this letter. The appearance form and instructions for the transcript order process can be found on this court's website. Please note that transcript ordering in CJA-eligible cases is a two-part process, requiring that you complete both the financing of the transcript (following the district court's procedures) and ordering the transcript (following the court of appeals' docketing procedures). Additional information regarding the special requirements of financing and ordering transcripts in CJA cases can be found on this court's website at <http://www.ca6.uscourts.gov/criminal-justice-act> under "Guidelines for Transcripts in CJA Cases."

Following this letter, you will receive a notice of your appointment in the eVoucher system. That will enable you to log into the eVoucher system and track your time and expenses in that system. To receive payment for your services at the close of the case you will submit your voucher electronically via eVoucher. Instructions for using eVoucher can be found on this court's website. Your voucher must be submitted electronically no later than 45 days after the final disposition of the appeal. *No further notice will be provided that a voucher is due.* Questions regarding your voucher may be directed to the Clerk's Office at 513-564-7078.

Finally, if you become aware that your client has financial resources not previously disclosed or is no longer eligible for appointed counsel under the Criminal Justice Act, please contact the Clerk or Chief Deputy for guidance.

Sincerely yours,

s/Ken Loomis
Administrative Deputy
Direct Dial No. 513-564-7067

cc: Ms. Rebecca Ashley Berels
Mr. Thomas Dorwin
Ms. Robin L. Johnson
Mr. John S. Pallas
Mr. Douglas Harrie Stewart