

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

KERRY KOTLER,

Petitioner,

v.

L. JUBERT, DEPUTY SUPERINTENDENT OF SECURITY, W. DANN,
CORRECTION SERGEANT, DARWIN DAILY, CORRECTIONS OFFICER, DAVID
CHARLAND, CORRECTIONS OFFICER,

Respondents.

*On Petition for a Writ of Certiorari to
the United States Court of Appeals for the Second Circuit*

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to Rule 39, Petitioner Kerry Kotler seeks leave to file the accompanying Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit without prepayment of costs and to proceed in forma pauperis. Petitioner sought, and was granted, leave to proceed in forma pauperis in the Court below and undersigned counsel was appointed to represent Petitioner pursuant to the Second Circuit's Pro Bono Counsel Plan, adopted to assist that court in processing pro se civil appeals more equitably and efficiently. Copies of the orders are attached.

Dated: August 23, 2021

/s/ Tadhg Dooley

Tadhg Dooley

Counsel of Record

WIGGIN AND DANA LLP

One Century Tower
New Haven, CT 06508-1832
(203) 498-4400
tdooley@wiggin.com

Counsel for Petitioner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KERRY KOTLER,

Plaintiff,

v.

**9:06-CV-1308
(FJS/DEP)**

**L. JUBERT, Deputy Superintendent of Security;
W. DANN, Correction Sergeant; DARWIN DAILY,
Corrections Officer; and DAVID CHARLAND,
Corrections Officer,**

Defendant.

APPEARANCES

OF COUNSEL

**KERRY KOTLER
97-A-6645**
Franklin Correctional Facility
P.O. Box 10
Malone, New York 12953
Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**
The Capitol
Albany, New York 12224
Attorneys for Defendants

**GREGORY J. RODRIGUEZ, AAG
WILLIAM A. SCOTT, AAG**

SCULLIN, Senior Judge

ORDER

At the conclusion of the trial of this matter, the jury returned a verdict in favor of Defendants. *See* Dkt. No. 262, Judgment. Plaintiff filed a Notice of Appeal regarding that judgment, *see* Dkt. No. 264, and also filed a motion for judgment as a matter of law or, in the alternative, for a new trial, *see* Dkt. No. 266. In a Memorandum-Decision and Order dated May 18,

2017, the Court denied that motion. *See* Dkt. No. 274. Plaintiff filed a Notice of Appeal regarding the Court's decision. *See* Dkt. No. 276. Pending before the Court is Plaintiff's motion to proceed with his appeal *in forma pauperis*. *See* Dkt. No. 279.

Pursuant to Rule 24 of the Federal Rules of Appellate Procedure,

a party to a district-court action who desires to appeal *in forma pauperis* must file a motion in the district court. The party must attach an affidavit that:

- (A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;
- (B) claims an entitlement to redress; and
- (C) states the issues that the party intends to present on appeal.

Fed. R. App. P. 24(a)(1).

In this District, if the appellant is a prisoner, who seeks to appeal *in forma pauperis*, he must also file a certification from an authorized official at his current institution of confinement, certifying the balance in his inmate account and the average balance in that account for the past six months.

In support of his motion, Plaintiff submitted an "Affidavit Accompanying Motion for Permission to Appeal *In Forma Pauperis*," attesting to his inability to pay the fees and costs associated with his appeal and a statement of the issues he intends to present on appeal. *See* Dkt. No. 279. He also submitted a completed "Prisoner Authorization Form,"¹ dated June 19, 2017, in which he "request[ed] and authorize[d] the institution holding [him] in custody to send to the Clerk

¹This form is a Second Circuit Form.

of the United States Court of Appeals for the Second Circuit certified copies of [his] prison trust fund account statements or the institutional equivalent for the past six months." *See* Dkt. No. 279-1. He further "request[ed] and authorize[d] the institution holding [him] in custody to calculate the amounts specified by the statutes, to deduct those amounts from [his] prison trust fund account, or institutional equivalent, and to disburse those amounts to the Untied States District Court for the Northern District of New York." *See id.*

Although the Court has not received the required certification regarding Plaintiff's inmate account in this case, Plaintiff recently filed a new case in this District, *Kotler v. Bosco*, 9:17-CV-394 (GTS/DEP), in which he filed an "Application to Proceed Without Full Prepayment of Fees; Affidavit and Authorization Form." *See Bosco*, 9:17-CV-394, Dkt. No. 5. That document included a certification from an authorized officer at his current institution of confinement, dated April 18, 2017, in which that officer certified as follows:

I certify that the applicant named herein has the sum of \$7.19 on account to his . . . credit at . . . Franklin Correctional Facility.

I further certify that the applicant has the following securities to his . . . credit: 0

I further certify that during the past six(6) months the applicant's average balance was \$22.57.

See id. at 2.

Based on its review of the affidavit Plaintiff filed in support of his motion to proceed with his appeal in this case *in forma pauperis*, as well as the above-cited certification in *Kotler v. Bosco*, the Court finds that Plaintiff has complied with the requirements of Rule 24(a)(1).

Accordingly, the Court hereby

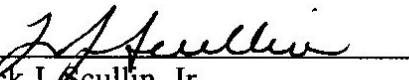
ORDERS that Plaintiff's motion to proceed with his appeal *in forma pauperis*, *see* Dkt. No.

279, is **GRANTED**; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: June 26, 2017
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Judge

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 14th day of August, two thousand nineteen.

Kerry Kotler,

Plaintiff-Appellant,

v.

16-4191(L),
17-1755(Con)

L. Jubert, Deputy Superintendent of Security, et al.,

Defendants-Appellees,

John Donelli, Superintendent, Bare Hill
Correctional Facility, et al.,

Defendants.

IT IS HEREBY ORDERED that

Tadhg Dooley
Wiggin and Dana LLP
One Century Tower
P.O. Box 1832
New Haven, CT 06508-1832
(203) 498-4549

be appointed as counsel for the Appellant. Counsel is directed to review Local Rule 31.2
regarding procedures for setting the filing dates for the submission of briefs.

For the Court:

Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe
