

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JERRY A. SMITH,

Plaintiff,

v.

CAUSE NO. 3:23-CV-282-JD-MGG

INDIANA PAROLE BOARD, et al.,

Defendants.

OPINION AND ORDER

Jerry A. Smith, a prisoner without a lawyer, filed a complaint. ECF 2. "A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quotation marks and citations omitted). Nevertheless, under 28 U.S.C. § 1915A, the court must review the merits of a prisoner complaint and dismiss it if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief.

Smith was denied parole and he has sued the parole board, its members, and various other individuals he believes violated his rights and caused him to be denied parole. He seeks his immediate release. Smith cannot obtain his release from custody in this action because his sole federal remedy is habeas corpus. 28 U.S.C. § 2241; *see also Preiser v. Rodriguez*, 411 U.S. 475, 488 (1973) (habeas corpus is the exclusive civil remedy

Appendix B

USDC IN/ND case 3:23-cv-00282-JD-MGG document 10 filed 04/20/23 page 1 of 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JERRY A. SMITH,

Plaintiff,

v.

INDIANA PAROLE BOARD, et al.,

Defendants.

CAUSE NO. 3:23-CV-282-JD-MGG

ORDER

Jerry A. Smith, a prisoner without a lawyer, filed additional information in support of his complaint and a motion to proceed in forma pauperis. ECF 8; ECF 9. Smith was already granted leave to proceed in forma pauperis. ECF 4. Furthermore, this case was dismissed on April 13, 2023. ECF 5.

For these reasons, the additional information in support of his complaint (ECF 8) is STRICKEN and the motion to proceed in forma pauperis (ECF 9) is DENIED AS MOOT.

SO ORDERED on April 20, 2023

/s/JON E. DEGUILIO
CHIEF JUDGE
UNITED STATES DISTRICT COURT

for a state prisoner seeking to challenge the fact or duration of his custody, and such relief cannot be pursued under 42 U.S.C. § 1983).

“The usual standard in civil cases is to allow defective pleadings to be corrected, especially in early stages, at least where amendment would not be futile.” *Abu-Shawish v. United States*, 898 F.3d 726, 738 (7th Cir. 2018). However, “courts have broad discretion to deny leave to amend where . . . the amendment would be futile.” *Hukic v. Aurora Loan Servs.*, 588 F.3d 420, 432 (7th Cir. 2009). For the reasons previously explained, such is the case here.

Accordingly, this case is DISMISSED pursuant to 28 U.S.C. § 1915A.

SO ORDERED on April 13, 2023

/s/ Jon E. DeGuilio
CHIEF JUDGE
UNITED STATES DISTRICT COURT

Appendix C

MATTHEW PRYOR
Parole Officers

MULLER
Mr.

ERIK KRUPTER
PD6 (Supvsr)
Defendants

JUDGMENT IN A CIVIL ACTION

The court has ordered that (*check one*):

the Plaintiff(s), _____ recover from the
Defendant(s) _____ damages in the
amount of _____, plus post-judgment interest at the rate of ____ %

the plaintiff recover nothing, the action is dismissed on the merits, and the defendant _____
recover costs from the plaintiff _____.

Other: This case is DISMISSED pursuant to 28 U.S.C. § 1915A.

This action was (*check one*):

tried to a jury with Judge _____
presiding, and the jury has rendered a verdict.

tried by Judge _____
without a jury and the above decision was reached.

decided by Chief Judge Jon E. DeGuilio.

DATE: 4/13/2023 CHANDA J. BERTA, ACTING CLERK OF COURT
by s/R. Figueroa
Signature of Clerk or Deputy Clerk

Appendix D1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JERRY A. SMITH,

Plaintiff,

v.

CAUSE NO. 3:23-CV-282-JD-MGG

INDIANA PAROLE BOARD, et al.,

Defendants.

ORDER

Jerry A. Smith, a prisoner without a lawyer, filed this lawsuit and must pay the filing fee as required by 28 U.S.C. § 1915(b). Therefore, the court:

- (1) GRANTS the plaintiff leave to proceed in forma pauperis;
- (2) WAIVES the initial partial filing fee;
- (3) ORDERS the plaintiff, Jerry A. Smith, IDOC # 129911, to pay (and the facility having custody to automatically remit) to the clerk 20% of the money received for each calendar month during which \$10.00 or more is received, until the \$350.00 filing fee is paid in full;
- (4) DIRECTS the clerk to create a ledger for receipt of these funds; and
- (5) DIRECTS the clerk to send a copy of this order to each facility where the plaintiff is housed until the filing fee has been paid in full.

SO ORDERED on April 13, 2023

/s/ Jon E. DeGuilio _____
CHIEF JUDGE
UNITED STATES DISTRICT COURT

The docketing of an appeal in this court requires litigants and their counsel to comply with several requirements and rules. This notice calls to your attention that the Practitioner's Handbook For Appeals to the United States Court of Appeals for the Seventh Circuit should always be consulted to make sure you comply with all rules and court procedures. The full text of the most current versions of the Handbook, the Federal Rules of Appellate Procedure, the Circuit Rules, court forms and checklists are available at <https://www.ca7.uscourts.gov> or can be obtained from the Clerk's Office upon request. Counsel and parties are reminded to always check the most current rules.

Important Scheduling Notice!

If a case is designated to proceed to oral argument, hearing notices will be mailed shortly before the date of oral argument. Please note that counsel's unavailability for oral argument must be submitted by letter, filed electronically with the Clerk's Office, no later than the filing of the appellant's brief in a criminal case and the filing of an appellee's brief in a civil case. See Cir. R. 34(b)(3). The court's calendar is located at <https://www.ca7.uscourts.gov/cal/argcalendar.pdf>. Once scheduled, oral argument is rescheduled only in extraordinary circumstances. See Cir. R. 34(b)(4), (e).

form name: c7_Docket_Note (form ID: 108)

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT



Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

May 22, 2023

By the Court:

No. 23-1866	JERRY A. SMITH, Plaintiff - Appellant v. INDIANA PAROLE BOARD, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 3:23-cv-00282-JD-MGG	
Northern District of Indiana, South Bend Division	
District Judge Jon E. DeGuilio	

The following is before the court:

1. **REQUEST FOR RESPONSE TO INTERROGATORIES**, filed on May 19, 2023, by the pro se appellant.
2. **LETTER**, filed on May 19, 2023, by the pro se appellant.

This appeal is subject to the Prison Litigation Reform Act and therefore all proceedings are suspended pending the assessment and payment of any necessary fees. *See Newlin v. Helman*, 123 F.3d 429, 434 (7th Cir. 1997). A review of the docket shows that the appellant's motion for leave to proceed on appeal in forma pauperis is currently pending before this court and will be resolved as soon as this court's docket permits. Accordingly, to the extent that the appellant seeks a response to interrogatories, retrieval of evidence, subpoenas, oral depositions, and declaratory judgment,

IT IS ORDERED that all the requested relief is **DENIED** without court action, pursuant to this court's fee notice and order dated May 5, 2023.

IT IS FURTHER ORDERED that the appellant's overdue Circuit Rule 3(c) docketing statement is due by June 21, 2023.

Appendix D2

Q

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
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Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
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PLRA FEE NOTICE AND ORDER

May 5, 2023

No. 23-1866	JERRY A. SMITH, Plaintiff - Appellant v. INDIANA PAROLE BOARD, et al., Defendants - Appellees
Originating Case Information	

District Court No: 3:23-cv-00282-JD-MGG
Northern District of Indiana, South Bend Division
District Judge Jon E. DeGuilio
Clerk/Agency Rep Chanda J. Berta

Circuit Rule 3(b) empowers the clerk to dismiss an appeal if the docket fee is not paid within fourteen (14) days of the docketing of the appeal. This appeal was docketed on May 5, 2023. The District Court has indicated that as of May 5, 2023, the docket fee has not been paid. Depending on your situation, you should:

1. Pay the required \$500.00 docketing fee PLUS the \$5.00 notice of appeal filing fee to the District Court Clerk, if you have not already done so. The Court of Appeals cannot accept this fee. You should keep a copy of the receipt for your records.
2. File a motion to proceed on appeal in forma pauperis with the District Court, along with a certified copy of your prison trust account statement for the six (6) month period preceding the filing of the notice of appeal, if you have not already done so. An original and three (3) copies of that motion is required. This motion must be supported by a sworn affidavit in the form prescribed by Form 4 of the *Appendix of Forms to the Federal Rules of Appellate Procedure* (as amended 12/01/2013), listing the assets and income of the appellant(s).
3. If the motion to proceed on appeal in forma pauperis is denied by the district court, you must either pay the required \$500.00 docketing fee PLUS the \$5.00 notice of appeal filing

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fee to the District Court Clerk, within fourteen (14) days after service of notice of the action to the district court, or within thirty (30) days of that date, renew your motion to proceed on appeal in forma pauperis with this court. If the motion is renewed in this court, it must comply with the terms of Fed. R. App. P. 24(a). In addition, you must provide this court with a brief memorandum explaining why you contend the district court's denial of leave to proceed on appeal in forma pauperis is erroneous. NOTE: The document should be titled "**MEMORANDUM IN SUPPORT OF PLRA MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS**" and must be filed within thirty (30) days of service of the order of the district court.

Further, this appeal is subject to the Prison Litigation Reform Act. Accordingly,

IT IS ORDERED that all other proceedings in this appeal are **SUSPENDED** pending the assessment and payment of any necessary fees. See *Newlin v. Helman*, 123 F.3d 429, 434 (7th Cir. 1997). The court will take no further action in this appeal until the fee status is resolved.

Neither party should tender any brief or motion that is not related to appellant's fee status on appeal. Appellee is under no obligation either to file a brief or to respond to any such motion filed by appellant. Any motion not related to appellant's fee status will be deemed denied without further court action.

form name: c7_PLRA_FeeNoticeSent_DC (form ID: 227)

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

PLRA FEE NOTICE AND ORDER

May 17, 2023

	JERRY A. SMITH, Plaintiff - Appellant
No. 23-1866	v. INDIANA PAROLE BOARD, et al., Defendants - Appellees
Originating Case Information: District Court No: 3:23-cv-00282-JD-MGG Northern District of Indiana, South Bend Division District Judge Jon E. DeGuilio Clerk/Agency Rep Chanda J. Berta	

This court's records indicate that on May 11, 2023, the District Court denied your motion to proceed in forma pauperis. Pursuant to Federal Rule of Appellate Procedure 24(a),

WITHIN THE NEXT THIRTY (30) DAYS YOU MUST EITHER:

1. Pay the required \$500.00 docketing fee PLUS the \$5.00 notice of appeal filing fee to the District Court Clerk, if you have not already done so. The Court of Appeals cannot accept this fee. You should keep a copy of the receipt for your records.
2. File a motion to proceed on appeal in forma pauperis with the Court of Appeals. This motion must be supported by a sworn affidavit in the form prescribed by Form 4 of the *Appendix of Forms to the Federal Rules of Appellate Procedure* (as amended 12/01/2018), listing the assets and income of the appellant(s). In addition, you must provide this court with a brief memorandum explaining why you contend the district court's denial of leave to proceed on appeal in forma pauperis is erroneous. **NOTE:** The document should be titled "MEMORANDUM IN SUPPORT OF PLRA MOTION FOR LEAVE TO PROCEED ON APPEAL IN

FORMA PAUPERIS" and must be filed within thirty (30) days of service of the order of the district court.

Further, this appeal is subject to the Prison Litigation Reform Act. Accordingly,

IT IS ORDERED that all other proceedings in this appeal are **SUSPENDED** pending the assessment and payment of any necessary fees. See Newlin v. Helman, 123 F.3d 429, 434 (7th Cir. 1997). The court will take no further action in this appeal until the fee status is resolved.

Neither party should tender any brief or motion that is not related to appellant's fee status on appeal. Appellee is under no obligation either to file a brief or to respond to any such motion filed by appellant. Any motion not related to appellant's fee status will be deemed denied without further court action.

form name: c7_PLRA_FeeNoticeSent_AC (form ID: 226)

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
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NOTICE OF CASE OPENING

May 5, 2023

No. 23-1866	<p>JERRY A. SMITH, Plaintiff - Appellant</p> <p>v.</p> <p>INDIANA PAROLE BOARD, et al., Defendants - Appellees</p>
<p>Originating Case Information:</p> <p>District Court No. 3:23-cv-00282-JD-MGG Northern District of Indiana, South Bend Division District Judge Jon E. DeGuilio Clerk/Agency Rep Chanda J. Berta Case filed: 05/05/2023 Case type: pr/st Fee status: PLRA fee due Date of Judgment: 04/13/2023 Date NOA filed: 05/04/2023</p>	

The above-captioned appeal has been docketed in the United States Court of Appeals for the Seventh Circuit.

Deadlines:

Appeal No./Filer	Document	Due Date
23-1866 Jerry A. Smith	Docketing statement due	05/11/2023
23-1866 Jerry A. Smith	Transcript information sheet	05/19/2023
23-1866 Jerry A. Smith	PLRA fee/mot/memo due	06/05/2023

THIS NOTICE SHALL NOT ACT AS A SUBSTITUTE FOR MOTIONS FOR NON-INvolvement /
SUBSTITUTION OF COUNSEL. COUNSEL ARE STILL REQUIRED TO FILE THE APPROPRIATE MOTIONS.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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May 5, 2023

No. 23-1866	<p>JERRY A. SMITH, Plaintiff - Appellant</p> <p>v.</p> <p>INDIANA PAROLE BOARD, et al., Defendants - Appellees</p>
Originating Case Information:	
District Court No: 3:23-cv-00282-JD-MGG Northern District of Indiana, South Bend Division District Judge Jon E. DeGuilio	

NOTIFICATION: NO APPELLEE(S) SERVED

The above captioned appeal was filed in this court this date. This is notification that no appellee(s) or counsel for the appellee(s) were served in the District Court.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT



Everett McKinley Dirksen
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ORDER

June 8, 2023

Before
ILANA DIAMOND ROVNER, *Circuit Judge*
MICHAEL Y. SCUDDER, *Circuit Judge*

No. 23-1866	JERRY A. SMITH, Plaintiff - Appellant
	v. INDIANA PAROLE BOARD, et al., Defendants - Appellees

Originating Case Information:

District Court No: 3:23-cv-00282-JD-MGG Northern District of Indiana, South Bend Division District Judge Jon E. DeGuilio
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The following are before the court:

1. **AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS**, filed on May 17, 2023, by pro se appellant Jerry A. Smith.
2. **MEMORANDUM IN SUPPORT OF PLRA MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS**, filed on May 17, 2023, by pro se appellant Jerry A. Smith.
3. **LETTER REGARDING AMENDED INFORMATION IN SUPPORT OF BRIEF**, filed on May 25, 2023, by pro se Appellant Jerry A. Smith.

Upon consideration of the request for leave to proceed as a pauper on appeal, the appellant's motion filed under Federal Rule of Appellate Procedure 24, the district court's order pursuant to 28 U.S.C. § 1915(a)(3) certifying that the appeal was filed in bad faith, and the record on appeal,

IT IS ORDERED that the motion for leave to proceed on appeal in forma pauperis is **DENIED**. The appellant has not identified a good faith argument that the district court erred in dismissing his case at screening. The appellant shall pay the required docketing fee within 14 days, or this appeal will be dismissed for failure to prosecute pursuant to Circuit Rule 3(b).

form name: **c7_Order_3J** (form ID: 177)

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
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ORDER

June 9, 2023.

By the Court:

No. 23-1866	JERRY A. SMITH, Plaintiff - Appellant v. INDIANA PAROLE BOARD, et al., Defendants - Appellees
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Originating Case Information:

District Court No: 3:23-cv-00282-JD-MGG
Northern District of Indiana, South Bend Division
District Judge Jon E. DeGuilio

The following is before the court: **MOTION FOR DEFAULT JUDGMENT**, filed on June 8, 2023, by pro se Appellant Jerry A. Smith.

This appeal is subject to the Prison Litigation Reform Act and therefore all proceedings are suspended pending the assessment and payment of any necessary fees. *See Newlin v. Helman*, 123 F.3d 429, 434 (7th Cir. 1997). A review of the docket shows that on June 8, 2023, the appellant's motion for leave to proceed on appeal in forma pauperis was denied.

IT IS ORDERED that the motion for default judgment is **DENIED** without court action, pursuant to this court's fee notice and order dated May 5, 2023. The clerk shall send the appellant a copy of the court's public docket.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT



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Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
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ORDER

June 8, 2023

Before
ILANA DIAMOND ROVNER, *Circuit Judge*
MICHAEL Y. SCUDDER, *Circuit Judge*

No. 23-1866	JERRY A. SMITH, Plaintiff - Appellant v. INDIANA PAROLE BOARD, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 3:23-cv-00282-JD-MGG Northern District of Indiana, South Bend Division District Judge Jon E. DeGuilio	

The following are before the court:

1. **AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS**, filed on May 17, 2023, by pro se appellant Jerry A. Smith.
2. **MEMORANDUM IN SUPPORT OF PLRA MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS**, filed on May 17, 2023, by pro se appellant Jerry A. Smith.
3. **LETTER REGARDING AMENDED INFORMATION IN SUPPORT OF BRIEF**, filed on May 25, 2023, by pro se Appellant Jerry A. Smith.

Upon consideration of the request for leave to proceed as a pauper on appeal, the appellant's motion filed under Federal Rule of Appellate Procedure 24, the district court's order pursuant to 28 U.S.C. § 1915(a)(3) certifying that the appeal was filed in bad faith, and the record on appeal,

IT IS ORDERED that the motion for leave to proceed on appeal in forma pauperis is **DENIED**. The appellant has not identified a good faith argument that the district court erred in dismissing his case at screening. The appellant shall pay the required docketing fee within 14 days, or this appeal will be dismissed for failure to prosecute pursuant to Circuit Rule 3(b).

form name: c7_Order_3J (form ID: 177)

Appendix E

USDC IN/ND case 3:23-cv-00282-JD-MGG document 18 filed 05/11/23 page 1 of 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JERRY A. SMITH,

Plaintiff,

v.

CAUSE NO. 3:23-CV-282-JD-MGG

INDIANA PAROLE BOARD, et al.,

Defendants.

ORDER

Jerry A. Smith, a prisoner without a lawyer, seeks leave to proceed in *forma pauperis* on appeal. ECF 13. Pursuant to 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken in *forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” This appeal is not taken in good faith for the reasons set forth in the court’s April 13, 2023, order dismissing this case. Therefore, his motion for leave to proceed in *forma pauperis* will be denied.

Smith also filed a motion seeking a certificate of appealability. ECF 12. That was not necessary and will therefore be denied.

For these reasons, the motion for leave to proceed *in forma pauperis* on appeal (ECF 13) and motion for a certificate of appealability (ECF 12) are DENIED.

SO ORDERED on May 11, 2023

/s/JON E. DEGUILIO
CHIEF JUDGE
UNITED STATES DISTRICT COURT

**Additional material
from this filing is
available in the
Clerk's Office.**