

APPENDIX

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FILED

STATE OF MINNESOTA
IN COURT OF APPEALS

May 23, 2023

**OFFICE OF
APPELLATE COURTS**

Joseph Bergeron,

O R D E R

Appellant,

#A23-0491

vs.

Guy Bosch, et al.,

Respondents.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Joseph Bergeron filed this appeal from the district court's order denying waiver of the filing fee and resulting judgment of dismissal on Bergeron's proposed petition for mandamus. The clerk of the appellate courts opened the appeal file on March 27, 2023.

2. Bergeron sought to proceed in forma pauperis (IFP) on appeal. With his initial appeal papers, he submitted an IFP application that was dated March 23, 2023, and captioned in the district court. *See* Minn. R. Civ. App. P. 109.02 (requiring party seeking to proceed IFP on appeal to make a motion for that relief in district court "on or before the date the appeal is commenced" and to "file a copy of the motion with [this court] simultaneously with the notice of appeal"). The district court denied the application on March 29, 2023, based on a specific finding that the appeal is frivolous.

3. When the district court denies IFP for appeal purposes, the party has 14 days to pay the filing fee or serve and file a motion for review of the denial. *Id.* Bergeron did not pay the filing fee for this appeal or file a timely motion for review. By order filed on April 28, 2023, we directed Bergeron to pay the filing fee by May 15, 2023, to avoid dismissal of this appeal.

4. Bergeron submitted a “Motion for Reconsideration” of the order filed on April 28, 2023. “No petition for rehearing shall be allowed” in this court. Minn. R. Civ. App. P. 140.01. The motion was properly rejected by the clerk of the appellate courts. In addition, the motion sought reconsideration on the basis that Bergeron had submitted a copy of the IFP application with the initial appeal papers. Bergeron has not established any basis for relief from the district court’s denial and he has not paid the filing fee as ordered.

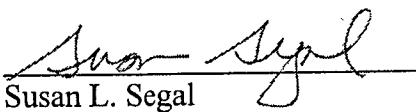
5. Bergeron objected to the clerk’s rejection of his motion for reconsideration and resubmitted the same motion. That motion was again rejected by the clerk’s office, in accordance with the prohibition in rule 140.01 against any petition for rehearing. Bergeron has been denied IFP status on appeal, he failed to establish that he is entitled to relief from the denial, and he has not paid the filing fee as ordered.

IT IS HEREBY ORDERED:

1. This appeal is dismissed.
2. The motion for an extension of time to file a reply brief is denied as moot.

Dated: May 23, 2023

BY THE COURT



Susan L. Segal
Chief Judge

02/27/2023 9:20 AM

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WASHINGTON

TENTH JUDICIAL DISTRICT

Joseph Bergeron,

Court File No. 82-CV-23-565

Petitioner,

vs.

ORDER FOR DISMISSAL

Commissioner of Corrections, Paul
Schnell, and Warden, Guy Bosch,

Respondents.

Based upon the file, record, and proceedings herein:

1. Petitioner Joseph Bergeron, a prison inmate, seeks a writ of mandamus based on an allegation that the Commissioner of Corrections has violated Minnesota Rule 2940.3800 by failing to assign Bergeron a release date and a term of reimprisonment. This matter was initially assigned to Hon. Gregory G. Galler, who, on February 8, 2023, granted Bergeron's application to proceed in forma pauperis. This matter was reassigned to this Court following Bergeron's removal of Judge Galler on February 17, 2023.

2. Bergeron is not entitled to proceed in forma pauperis, because he has not complied with Minn. Stat. § 563.02. Specifically, Bergeron has failed to comply with subd. 2(a)(1) (must exhaust the inmate complaint procedure, and must state in his application that he has done so); subd. 2(a)(2)(i) (must state that his claim is not substantially similar to a previous claim); and subd 2(a)(2)(ii) (must provide complete information regarding his identity). Paragraphs 6, 7, and 8 of Bergeron's application to proceed in forma pauperis are blank.¹

3. Furthermore, Bergeron previously brought a petition for mandamus relief based on the same arguments. (Court File No. 82-CV-21-2440.) The dismissal of that petition was affirmed by the Court of Appeals in a decision issued only a few months ago. *See Bergeron v. Schnell*, 2022 WL 2794083 (Minn. Ct. App. July 13, 2022) (nonprecedential). Bergeron's current petition for mandamus relief is a recycled version of that previous, unsuccessful petition. As summarized by the Court of Appeals in *Bergeron v. Schnell*, 2022 WL 2794083, at *1, Bergeron has repeatedly

¹ See Doc. No. 3.

challenged his incarceration. Bergeron now appears to be asking this Court to rule that previous decisions by the appellate courts were incorrect.² That is not the role of this Court.

4. For all of these reasons, Bergeron is not entitled to proceed in forma pauperis. His claims are frivolous because they have no discernable basis in law or fact, particularly in light of the Court of Appeals' decision on his previous petition for mandamus relief. This matter must be dismissed with prejudice, pursuant to Minn. Stat. § 563.02, subd. 3(a). In addition, Bergeron's failure to exhaust the inmate complaint procedure may provide an independent basis for dismissing this matter. *See Cassidy v. Fabian*, 2008 WL 1748217 (Minn. Ct. App. Apr. 15, 2008) (nonprecedential).

Now, therefore, **IT IS HEREBY ORDERED:**

1. The February 8, 2023 Order granting Bergeron's application to proceed in forma pauperis is **VACATED**.
2. Bergeron's petition is **DISMISSED WITH PREJUDICE**.
3. Washington County Court Administration shall transmit notice of filing of this Order and a copy of this Order by the designated e-filing and e-service system, e-mail, or mail to every party affected thereby or upon such party's attorney of record, whether or not such party has appeared in the action, at the party or attorney's last known mail or e-mail address. Such transmittal shall constitute due and proper notice of this Order for all purposes.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Freeman, Juanita
(Judge)

2023.02.27 14:42:11
-06'00'

JUANITA C. FREEMAN
Judge of District Court

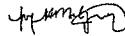
Dated: February 27, 2023

Filed in District Court
State of Minnesota

02/28/23 9:45 AM

I hereby certify that the
foregoing order constitutes
the Judgment of the Court

02/28/23 9:45 AM



² See Doc. No. 1, Petition 7-8 ("Precedent would indicate that this opinion was an error by the appellate court"). Bergeron's argument in that section of his petition was specifically addressed by the Court of Appeals in Paragraph 7 of *Bergeron v. Schnell*, 2022 WL 2794083.

FILED

STATE OF MINNESOTA
IN SUPREME COURT

September 19, 2023

**OFFICE OF
APPELLATE COURTS**

A23-0491

Joseph Bergeron,

Petitioner,

vs.

Guy Bosch, et al.,

Respondents.

O R D E R

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the motion of Joseph Bergeron for leave to proceed
in forma pauperis is granted.

IT IS FURTHER ORDERED that the petition of Joseph Bergeron for further review
is denied.

Dated: September 19, 2023

BY THE COURT:



Lorie S. Gildea
Chief Justice

Filed in District Court
State of Minnesota

Minnesota

Feb 8 2023 4:17 PM -06:00

District Court

County
Washington

Judicial District:	10th
Court File Number:	82-CV-23-565
Case Type:	General

Joseph Bergeron

Plaintiff/Petitioner

vs.

Guy Bosch, Paul Schnell, Commissioner of Corr

Defendant/Respondent

**Order Allowing Inmate
In Forma Pauperis Action
(Minn. Stat. § 563.02)**

Upon the affidavit of the applicant, and based on the authority of Minn. Stat. § 563.02

IT IS ORDERED:

1. A. Applicant is authorized to proceed in forma pauperis without being required to pay filing fees, service and publication fees, and copying fees.
 B. Applicant is authorized to proceed in forma pauperis upon initial payment of \$ _____ (50% of the balance of the inmate account). The Commissioner of Corrections is directed to withdraw this amount and shall continue making withdrawals from the inmate's account and forward the amounts withdrawn to the court administrator at intervals as the applicable funds equal at least \$10 until the entire filing fee of \$ _____ has been paid.*
2. All necessary pleadings in this proceeding shall be served by the sheriff of the appropriate county as requested without paying any fees or costs.
3. If funds are recovered by either settlement or judgment in this action, the costs deferred and expenses directed by the Court to be paid in this order shall be included in such settlement or judgment and shall be paid directly to the court administrator by the opposing party.
4. This order expires one year from the date of this order, unless otherwise amended or altered by the court.

Galler, Gregory

Judge Gregory G. Galler 2023.02.08

15:53:20 -06'00'

Date: _____

Judge of District Court

***NOTICE TO INMATE:** If you opt not to proceed under this provision, you must notify the commissioner of corrections immediately to stop the withdrawal of funds. Your pleadings will not be returned to commence service of the action until payment has been received by the court.

Appendix D; Pg. 7

STATE OF MINNESOTA
IN COURT OF APPEALS

FILED

April 28, 2023

**OFFICE OF
APPELLATE COURTS**

Joseph Bergeron,

O R D E R

Appellant,

A23-0491

vs.

Guy Bosch, et al.,

Respondents.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

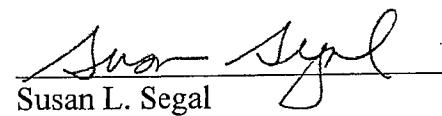
1. The district court denied an application by Appellant Joseph Bergeron to waive the filing fee for his proposed petition for mandamus. We have construed this appeal to be from that denial and the resulting judgment of dismissal of the proposed action with prejudice.
2. Bergeron filed an application in district court to waive the filing fee for this appeal. That motion was denied by the district court on March 29, 2023.
3. When a motion to proceed in forma pauperis in connection with an appeal is denied, the applicant has 14 days to pay the filing fee or serve and file a motion for review of the denial. *See* Minn. R. Civ. App. P. 109.02. Bergeron has not paid the filing fee for this appeal and did not file a timely motion for review.

IT IS HEREBY ORDERED:

1. On or before May 15, 2023, Appellant Joseph Bergeron shall pay the \$550 filing fee for this appeal.
2. Scheduling of a nonoral conference on appeal is deferred, pending Bergeron's payment of the filing fee. If Bergeron does not pay the filing fee, this appeal will be dismissed.

Dated: April 28, 2023

BY THE COURT



Susan L. Segal
Chief Judge

STATE OF MINNESOTA
IN COURT OF APPEALS

OFFICE OF
APPELLATE COURTS

~~MAY 02 2023~~

~~FILED~~

Joseph Bergeron,
Appellant,

CASE #A23-0491

vs.

Commissioner of Corrections,
Paul Schnell, and William Bolin,
MCF-Stillwater Warden,
Respondent.

MOTION FOR RECONSIDERATION
OF 28 April 2023 ORDER

STATE OF MINNESOTA
COUNTY OF WASHINGTON

Introduction

Appellant is a Pro Se litigant, incarcerated, unlettered, unskilled in the law. Appellant is frequently on lockdown as he is today, with very limited legal access to materials, court rules, case law etc. The scales of justice are far beyond a judicial imbalance, prejudice against Appellant is not too strong a word.

"Court must remain sensitive "to the special problems faced by prisoners attempting to proceed pro se in vindicating their constitutional rights ..." Nickens v. White, 622 F. 2d. 967, 971 (8th Cir. 1980).

Appellant has went above and beyond to attempt to cover every bases and follow every rule he has been able to access. With that in mind and not being able to access the actual rule, Appellant believes that the court may be in error, or possibly overly harsh.

Argument

The basis of Appellant's appeal is the denial to proceed Informa Pauperis by Judge Freeman, she reversed Judge Galler's grant to proceed, and deemed his Petition frivolous.

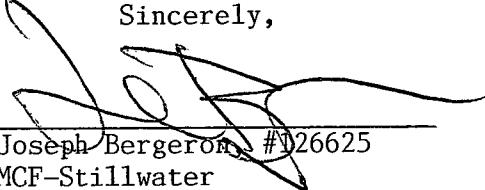
The Appellate court received Appellant's notice of appeal and other

related documents on 24 March 2023 (see court's 03 April 2023 Order). Included and indexed on Appellant's "Certificate of Service" was a Motion to the Appellate court to proceed "Informa Pauperis" therein appA\$1stueh Appellant's "Motion to Proceed Informa Pauperis" in the Appellate court was received by that court within the 14 days the court's Order cites at 3.

Because Pro Se litigant has did his very best to comply with this court's rules given his many impediments. He requests that this court rescind its 28 April 2023 Order, and consider his Informa Pauperis application already filed with this court.

Date: 3 May 2023

Sincerely,



Joseph Bergeron #126625
MCF-Stillwater
970 Pickett Street North
Bayport, MN 55003-1490

FILED

May 10, 2023

**OFFICE OF
APPELLATE COURTS**



Office of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155
651-296-2581
www.mncourts.gov

May 10, 2023

Joseph Bergeron
OID 126625
970 Pickett St. N.
Bayport, MN
55003

RE: Returning Motion for Reconsideration

Dear Mr. Bergeron,

On May 8th, 2023, the Clerk's Office received a motion for reconsideration from you for case number A23-0491. This letter is to inform you that your motion has not been accepted as filed and it returned to you with this letter. There is no motion for reconsideration allowed in the Court of Appeals.

If you are attempting to seek review of a decision of the Court of Appeals you must file a **Petition for Review** with the Supreme Court within 30 days of the filing of the decision. Please see Minn. R. Civ. App. P. 117 for further information regarding the document requirements and filing fee.

Best regards,

Office of the Clerk of the Appellate Courts

OFFICE OF
APPELLATE COURTS

16 May 2023

~~MAY 18 2023~~

FILED

Office of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

**RE: Letter from the Clerk of Appellate Courts, dated 10 May 2023 returning
Appellant's "Motion for Reconsideration" as not allowed and not filed.**

Dear Clerk:

I received your letter returning my "Motion for Reconsideration" today; 16 May 2023. You state in your letter that; "There is no motion for reconsideration allowed in the Court of Appeals" without citing "any" rule to support this decision. Without a "rule" it is expressly the courts determination(s) on what is correct procedure.

You have clearly erred in circumventing the court and in the action determination itself:

" ... the Rules ... do not expressly allow motions to reconsider, but neither do the rules preclude such motions. Minnesota courts have generally allowed motions to reconsider ... " Ramos v. State of Minnesota, Minn. App. Ct. , Case # A12-2145 (I. Motion to Reconsider) (May 2013)

This motion was filed to prevent the disposal of my action (A23-0491) on 15 May 2023 for what Appellant believes is an error of the court. You have now compounded the error with a potential fatal flaw in timing that was outside of my control.

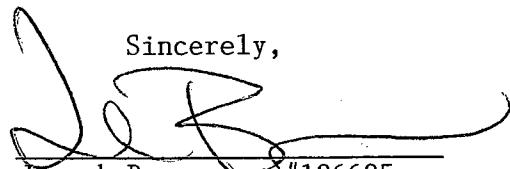
I have enclosed all the documents herein, please file them with the court with the note that it was a clerk error that had nothing to do with an Appellant mistake, as such my "Motion to Reconsider" should be considered "timely filed".

Also, being rushed, locked in, and without means to make copies, please send a copy of "all" documents herein, I will bear any costs you require.

As Always, your time and assistance is very much appreciated.

Date: 16 May 2023

Sincerely,


Joseph Bergeron, #126625
MCF-Stillwater
970 Pickett Street North
Bayport, MN 55003-1490

ENCLOSURES



Office of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155
651-296-2581
www.mncourts.gov

May 19, 2023

Joseph Bergeron
OID 126625
970 Pickett St. N.
Bayport, MN
55003

RE: Returning Motion for Reconsideration

Dear Mr. Bergeron,

On May 18th, 2023, the Clerk's Office received a second motion for reconsideration from you for case number A23-0491. This letter is to inform you that your motion has again not been accepted as filed and it is returned to you with this letter. There is no motion for reconsideration allowed in the Court of Appeals.

As previously advised, if you are attempting to seek review of a decision of the Court of Appeals you must file a Petition for Review with the Supreme Court within 30 days of the filing of the decision. Please see Minn. R. Civ. App. P. 117 for further information regarding the document requirements and filing fee.

Best regards,

Office of the Clerk of the Appellate Courts

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Joseph Bergeron --- PETITIONER
(Your Name)

VS.

Paul Schnell, Commissioner of Corrections, et., at. --- RESPONDENT(S)

PROOF OF SERVICE

I, Joseph Bergeron, do swear or declare that on this date,
12 December, 2023, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Paul Schnell, Commissioner of Corrections, et., al. through

Kelly S. Kemp
Assistant Attorney General
900 Bremer Tower
445 Minnesota Street, Suite 900
St. Paul, MN 55101-2127

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

Executed on 12 December, 2023

