

2003 WL 23100297

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United States District Court,
W.D. Wisconsin.

Dennis E. JONES ‘EL, Micha‘el Johnson, De‘ondre Conquest, Luis Nieves, Scott Seal, Alex Figueroa, Robert Sallie, Chad Goetsch, Edward Piscitello, Quintin L’minggio, Lorenzo Balli, Donald Brown, Christopher Scarver, Benjamin Biese, Lashawn Logan, Jason Pagliarini, and Andrew Collette, and all others similarly situated, Plaintiffs,

v.

Gerald BERGE and Jon Litscher, Defendants.

No. 00-C-421-C. | Oct. 3, 2003.

Attorneys and Law Firms

Stephen P. Hurley, Edward R. Garvey, for Plaintiffs.

James E. McCambridge, Assistant Attorney General, Wisconsin Department of Justice, Madison, WI, for Defendants.

Opinion

ORDER

CRABB, J.

*1 In an order dated September 2, 2003, I denied as moot class member Evelio Duarte-Vestar’s motion pursuant to Fed. R.App. P. 10(e) to modify the record on appeal. The record of Duarte-Vestar’s appeal showed that the Court of Appeals for the Seventh Circuit had dismissed his appeal on July 31, 2003. Now Duarte-Vestar has filed a notice of appeal from the September 2 order. Separately, on

October 2, 2003, Duarte-Vestar filed a number of other papers that he appears to want the court to consider in connection with his notice of appeal. Because he did not pay the \$105 fee for filing his notice of appeal, I construe Duarte-Vestar’s notice as including a request for leave to proceed *in forma pauperis* on appeal. That request will be denied.

Plaintiff’s appeal from the September 2 order denying his motion to modify the record of a closed appeal is not appealable. Even if the order was appealable, Duarte-Vestar can make no legally meritorious argument on appeal that this court should have allowed him to supplement the record of an appeal that has been decided. Therefore, I must certify that Duarte-Vestar’s appeal from the September 2 order is not taken in good faith.

ORDER

IT IS ORDERED that Evelio Duarte-Vestar’s motion for leave to proceed *in forma pauperis* on appeal is DENIED. I certify that his appeal is not taken in good faith.

Further, IT IS ORDERED that Duarte-Vestar is to pay the \$105 fee for filing his appeal immediately. If Duarte-Vestar fails to pay the fee and has the money to do so, it will be understood that he is giving up his ability to proceed *in forma pauperis* in any other proceeding or on any additional appeals until the fee is paid in full. If Duarte-Vestar does not presently have the full \$105 in his prison account, prison officials may apply all of whatever portion of the fee he has in his account to his obligation in this case and take whatever additional funds may be deposited in his account in the future as necessary to pay the balance of the fee.