

2003 WL 23282609

Only the Westlaw citation is currently available.
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'Mingio, 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. | Nov. 17, 2003.

Attorneys and Law Firms

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

James E. McCambridge, Assistant Attorney General,
Madison, WI, for Defendants.

Opinion

MEMORANDUM

CRABB, J.

*1 Evelio Duarte-Vestar has filed a document titled "Amended Appeals (Notice)." In the caption, he refers to appeal nos. 03-3579 and 02-2013, which he filed earlier in this case. Clearly understanding that he is required under the 1996 Prison Litigation Reform Act to pay for each appeal he files, Duarte-Vestar points out that he should be allowed to file his "amended appeal" without paying an additional fee pursuant to Fed. R.App. P. 4(a)(4)(B)(iii).

Fed. R.App. P. 4(a)(4)(B)(iii) does not apply to inmate Duarte-Vestar's situation. That rule applies where a party who has filed both a notice of appeal and a post-judgment motion pursuant to Fed.R.Civ.P. 59 or 60 wishes to amend the notice of appeal to include a challenge to the

district court's ruling on the Rule 59 or Rule 60 motion after the decision has been made. Duarte-Vestar did not file a Rule 59 or Rule 60 motion in this case and the judgment has not been amended at any time since Duarte-Vestar filed his original notices of appeal.

Indeed, it is baffling why inmate Duarte-Vestar has filed an amended appeal. The docket sheet for appeal no. 02-2013 shows that this court denied Duarte-Vestar's request for leave to proceed on appeal *in forma pauperis* on February 6, 2003; subsequently, with considerable difficulty (as reflected by the docket sheet), Duarte-Vestar renewed his *in forma pauperis* motion in the court of appeals; on July 3, 2003, the court of appeals denied Duarte-Vestar's motion and gave Duarte-Vestar fourteen days in which to pay the filing fee; Duarte-Vestar failed to pay the fee and on July 28, 2003, the court of appeals dismissed his appeal. Duarte-Vestar has attempted to have the mandate recalled but his request was denied on August 28, 2003. There has been no further activity with respect to appeal no. 02-2013 until Duarte-Vestar filed the present purported amendment. I say "purported," because the proposed amended appeal does not seek review of any order that Duarte-Vestar's original appeal did not include. Thus, there is no rule, including Fed. R.App. P. 4(a)(4)(B)(iii), under which Duarte-Vestar may seek to amend his notice of appeal for appeal no. 02-2013.

The record for appeal no. 03-3579 shows that the appeal is still pending. However, the original appeal was filed on September 30, 2003; on October 3, 2003, this court denied Duarte-Vestar's request for leave to proceed *in forma pauperis* on appeal and certified that the appeal was not taken in good faith; on November 3, 2003, Duarte-Vestar moved in the court of appeals to proceed *in forma pauperis*; and the court of appeals has not yet acted on inmate Duarte-Vestar's motion. Again, the judgment in this case has not been amended and Duarte-Vestar's amended appeal does not challenge any order that he did not challenge in his original appeal.

Because there is no apparent basis for inmate Duarte-Vestar's "amended appeals" I am placing the document in the court's file but will not take any further action with respect to it unless the court of appeals directs this court to treat the matter differently.