

2002 WL 32341744

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United States District Court,  
W.D. Wisconsin.

Dennis W. GONZALEZ, Plaintiff,  
v.

Jon E. LITSCHER, Gerald Berge and Todd T.  
Overbo, Defendants.

No. 01-C-521-C. | Nov. 15, 2002.

#### Attorneys and Law Firms

Dennis Gonzalez, pro se, for Plaintiff.

Jody J. Schmelzer, Assistant Attorney General, Madison,  
WI, for Defendants.

#### Opinion

### ORDER

CRABB, J.

\*1 Presently before the court are plaintiff's motion for reconsideration, notice of appeal, and request for a transcript and docket sheet. In addition, plaintiff has included with his filings a motion to intervene prepared by Eric Gomez and a copy of a motion for reconsideration prepared by William Medina. Like plaintiff, both Gomez and Medina are inmates at the Wisconsin Secure Program Facility.

For plaintiff's information, Mr. Medina has been advised by letter that because he is not a party to this action, his submission cannot be considered. In addition, I will deny Mr. Gomez's motion to intervene because judgment has already been entered in this case and it is now closed.

As for plaintiff's motion for reconsideration, judgment was entered in this case on October 29, 2002. Plaintiff's motion is dated November 6, 2002. Accordingly, I construe it as a timely filed motion to alter or amend the judgment pursuant to Fed.R.Civ.P. 59(e). *See Helm v. Resolution Trust Corp.*, 43 F.3d 1163, 1166 (7th Cir.1995). I have reviewed plaintiff's motion and will deny it because nothing in it convinces me that I erred in entering judgment for defendants at the close of the bench trial in this case. Plaintiff does not contest any evidentiary rulings made by the court or argue that the court applied the wrong substantive law. Rather, he either rehashes arguments he made at trial concerning the security

concerns articulated by defendants in support of the challenged prison regulations or seeks a second bite at the apple in attacking the validity of those concerns.

Plaintiff has filed a notice of appeal. Because the notice is not accompanied by the \$105 fee for filing his appeal, I construe plaintiff's notice to include a request for leave to proceed on appeal *in forma pauperis*.

Plaintiff's request for leave to proceed *in forma pauperis* on appeal is governed by the 1996 Prison Litigation Reform Act. This means that this court must determine first whether plaintiff's request must be denied either because he has three strikes against him under 28 U.S.C. § 1915(g) or because the appeal is not taken in good faith. Plaintiff does not have three strikes against him and I do not intend to certify that his appeal is not taken in good faith.

The only other hurdle to plaintiff's proceeding with his appeal *in forma pauperis* is the requirement that he make an initial partial payment of the filing fee that has been calculated from a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. 28 U.S.C. § 1915(a)(2). Plaintiff has not submitted the necessary trust fund account statement.

Accordingly, plaintiff will be given until December 5, 2002, in which to submit a certified copy of his trust fund account statement for the six-month period beginning approximately May 14, 2002 to approximately November 14, 2002. If, by December 5, 2002, plaintiff fails to submit the required statement or show cause for his failure to do so, then I will advise the court of appeals of his non-compliance so that it may take whatever action is necessary with respect to his appeal.

\*2 Finally, plaintiff asks for a transcript of the trial and a docket sheet. Because plaintiff is indigent, it appears to be in the interest of justice to construe plaintiff's request for a transcript as a motion for preparation of the trial transcript at government expense pursuant to 28 U.S.C. § 753(f), and to grant that motion. However, a grant of the motion is conditioned on plaintiff's perfecting his appeal by submitting the initial partial payment that will be calculated from the trust fund account statement he is to submit no later than December 5, 2002. Once plaintiff submits his trust fund account statement, he will be notified of the exact amount of the required initial partial payment. A copy of the docket sheet in this case is enclosed with this order, as plaintiff requested.

ORDER

**Gonzalez v. Litscher, Not Reported in F.Supp.2d (2002)**

IT IS ORDERED that

1. The motion to intervene submitted by Eric Gomez is DENIED;

2. Plaintiff Dennis W. Gonzalez's motion to alter or amend the judgment in this case pursuant to Fed.R.Civ.P. 59(e) is DENIED;

3. Plaintiff may have until December 5, 2002, in which to submit a certified copy of his trust fund account statement for the six-month period beginning approximately May 14, 2002 to approximately November 14, 2002. If, by December 5, 2002, plaintiff fails to submit the required

statement or show cause for his failure to do so, then I will advise the court of appeals of his non-compliance so that it may take whatever action is necessary with respect to his appeal;

4. The proceedings in the trial of this case shall be prepared and furnished to the plaintiff, with the fees therefor to be paid by the United States, pursuant to 28 U.S.C. § 753(f), on the condition that plaintiff first submits the initial partial payment required to perfect his notice of appeal.