

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 94-CR-10129-01-JTM

No. 16-CV-1231-JTM

PHUOC H. NGUYEN,

Defendant.

**ORDER DENYING LEAVE TO PROCEED
IN FORMA PAUPERIS ON APPEAL**

Given the procedural posture of this case, the court construes defendant Phuoc Nguyen's application to proceed in district court without prepayment fees or cost as a motion for leave to proceed in forma pauperis ("ifp") on appeal (Dkt. 276). To obtain authorization to proceed ifp on appeal, defendant must meet the requirements of 28 U.S.C. § 1915 and Rule 24 of the Federal Rules of Appellate Procedure. First, he must submit an affidavit that includes a statement of all assets he possesses, shows that he is unable to pay or give security for the required fees, and states the nature of action of the appeal and his belief that he is entitled to redress. 28 U.S.C. § 1915(a)(1); Fed. R. App. P. 24(a)(1). Second, he must submit a certified copy of his prison trust fund account statement for the six-month period immediately prior to the filing of the notice of appeal. 28 U.S.C. § 1915(a)(2). "[This] must be done regardless of the prisoner's ifp status in the district court." *Boling-Bey v. U.S. Parole Com'n*, 559 F.3d 1149, 1153 (10th Cir. 2009) (citing 28 U.S.C. § 1915(a); Fed. R. App. P. 24(a)(1) (requiring motion in the district court unless Rule 24(a)(3) applies); 10th Cir. R. 24.1 (requiring the district court to "obtain sufficient information

to determine [a] prisoner's eligibility for, and make the assessment of, a partial [appellate] filing fee under the [PLRA]" when "a prisoner tenders no filing fee, or less than the full fee")). Third, "an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. §1915(a)(3); Fed. R. App. P. 24(a)(3).

The court finds that the first and third requirements have been met. Defendant, however, has failed to submit a certified copy of his trust fund account for the applicable period. The "inmate inquiry" attached to the motion was not a certified copy, nor did it contain the information needed to determine defendant's average monthly deposit and his average balance. For this reason, the court denies the motion.

IT IS THEREFORE ORDERED this 15th day of November, 2016, that Nguyen's motion for leave to proceed in forma pauperis on appeal (Doc. 276) is **DENIED**.

s/ J. Thomas Marten
J. THOMAS MARTEN, District Judge