

**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.

**MEMORANDUM AND ORDER GRANTING RECONSIDERATION
AND LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL**

On November 15, 2016, the court denied defendant Phuoc Nguyen's motion to proceed *in forma pauperis* ("IFP") on appeal due to his failure to submit a certified copy of his trust fund account for the applicable period. Dkt. 277. Nguyen now seeks reconsideration of that order, claiming the failure was due to the prison official's inaccurate assurance that the previously provided "Inmate Inquiry" satisfied the requirements of 28 U.S.C. § 1915(a)(2). Dkt. 281. He has attached a certified copy of his inmate account in support of this motion. Because that attachment satisfies § 1915(a)(2) and the court has previously granted a certificate of appealability as to its ruling on defendant's motion to vacate his sentence under 28 U.S.C. § 2255 (Dkt. 266), the court finds that defendant may proceed IFP on appeal.

Upon examining his account, the court finds defendant's average monthly deposit from June to November 2016 is \$244.03, and the average monthly balance is \$236.53.¹ Pursuant to 28 U.S.C. § 1915(b)(1), the court assesses an initial partial appellate filing fee of \$48.50, twenty

¹ The court calculated the average monthly balance by: 1) adding up the beginning balance and ending balance for each month in the applicable period (June through November) and dividing the sum by two; and 2) adding the average monthly balances and dividing the sum by six.

percent of the greater of the average monthly deposit or the average monthly balance, rounded to the lower half dollar. After the payment of the initial partial filing fee, defendant must make monthly payments of twenty percent of the preceding month's income in his institutional account until he satisfies the \$505.00 appellate filing fee. 28 U.S.C. § 1915(b)(2).

IT IS THEREFORE ORDERED this 3rd day of January, 2017, that defendant's motion for reconsideration (Dkt. 281) is **GRANTED**. Defendant may proceed IFP on appeal. The court directs the Clerk to mail a copy of this order to defendant's place of confinement, to the attention of the Trust Fund Office.

s/ J. Thomas Marten
United States District Judge