

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

SIMUELL MADDEN, JR.,

Plaintiff,

v.

CASE NO. 06-3318-SAC

JOE REARDON,
et al.,

Defendants.

O R D E R

On April 20, 2007, this court entered an Order granting plaintiff thirty days in which to submit the documentation required by statute in support of his application for leave to proceed in forma pauperis (ifp application), and to show cause why this action should not be dismissed for failure to allege sufficient facts to state an Eighth Amendment claim. Plaintiff filed a Response (Doc. 11), and an Amended Application to Proceed Without Prepayment of Fees (Doc. 12). Having considered these filings, the court finds as follows.

Plaintiff was informed in the court's prior Order that he was required by 28 U.S.C. § 1915(a)(2) to submit "a certified copy of (his) trust fund account statement (or institutional equivalent) . . . for the 6-month period immediately preceding the filing of the complaint . . . obtained from the appropriate official of each prison at which the prisoner is or was confined." Plaintiff submitted an amended ifp application, but has again failed to include the required documentation. The documentation attached to his amended application is for one month only. Accordingly, the court finds plaintiff's ifp application (Doc. 12) should be denied.

The court has reviewed plaintiff's Response to the court's Order that he show cause why this action should not be dismissed, and finds it does not cure the deficiencies in plaintiff's complaint pointed out in the court's prior Order. Plaintiff's allegations in his Response that Sheriff Green knows smoking still exists at the jail, that tobacco products are being brought into the jail, and that he is still taking medication do not establish either that he personally has been exposed to unreasonably high levels of ETS or that the named defendants were aware of a substantial risk of serious harm to him personally from ETS. The court concludes for the reasons stated herein and in the court's Order of April 20, 2007, that Mr. Madden has failed to allege facts sufficient to support a claim of federal constitutional violation.

IT IS THEREFORE ORDERED that plaintiff's applications to proceed in forma pauperis (Docs. 2 & 12) are denied as not properly documented.

IT IS FURTHER ORDERED that this action is dismissed, without prejudice, for failure to satisfy the filing fee prerequisites and for failure to allege facts in support of a federal constitutional claim.

IT IS SO ORDERED.

Dated this 27th day of December, 2007, at Topeka, Kansas.

s/Sam A. Crow
U. S. Senior District Judge