

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

COREY D. JONES,

Plaintiff,

v.

CASE NO. 07-3223-SAC

M. BERHANE, et al.,

Defendants.

O R D E R

In a Memorandum and Order issued October 18, 2007, this court screened this FTCA complaint and gave plaintiff time to satisfy the filing fee and show cause why this action should not be dismissed as against all defendants except the United States, and proceed only upon his claims under the FTCA.

Plaintiff has since filed his Response (Doc. 7), a Motion to Appoint Counsel (Doc. 8), and a Motion for Leave to Proceed in forma pauperis (Doc. 9). Having reviewed these filings, the court finds as follows.

For the reasons stated in the court's Memorandum and Order of October 18, 2007, the court finds this action must be dismissed as against all defendants other than the United States and may proceed only upon plaintiff's claims properly brought and exhausted under the FTCA.

Having considered plaintiff's Motion to Appoint Counsel (Doc. 8), the court finds it should be denied at this juncture, without

prejudice. Plaintiff is not entitled to appointment of counsel in this civil action, and appears capable of providing facts in support of his claim.

Plaintiff seeks leave to proceed without prepayment of fees (Doc. 9) and has submitted the requisite affidavit and financial records in support of his motion. Under the Prison Litigation Reform Act, a prisoner litigant is required to pay the full filing fee in a civil action. Where insufficient funds exist for initial payment of the full filing fee, the court is directed to collect an partial filing fee in the amount of 20 percent of the greater of the average monthly deposits to the inmate's account or the average monthly balance for the preceding six months. 28 U.S.C. § 1915(b)(1)(A) and (B). However, where an inmate has no means by which to pay an initial partial filing fee, the prisoner shall not be prohibited from bringing a civil action. 28 U.S.C. § 1915(b)(4).

Having considered the plaintiff's financial records, the court finds no initial partial filing fee may be imposed at this time due to plaintiff's limited resources, and grants plaintiff leave to proceed in forma pauperis. However, plaintiff remains obligated to pay the \$350.00 district court filing fee in this civil action through payments collected from his inmate trust fund account when funds become available, as authorized by 28 U.S.C. § 1915(b)(2).

**IT IS THEREFORE ORDERED** that plaintiff's Motion for Leave to Proceed in forma pauperis (Doc. 9) is granted.

**IT IS FURTHER ORDERED** that this action is dismissed and all relief is denied as against all named defendants except the United States, and this action shall proceed only as a complaint under the FTCA.

**IT IS FURTHER ORDERED** that plaintiff's Motion to Appoint Counsel (Doc. 8) is denied, without prejudice.

**IT IS FURTHER ORDERED** that the clerk of the court shall prepare summons and waiver of service forms pursuant to Rule 4(d) of the Federal Rules of Procedure, to be served on defendant United States by a United States Marshal or a Deputy Marshal at no cost to plaintiff absent a finding by the court that plaintiff is able to pay such costs.

**IT IS FURTHER ORDERED** that the screening process under 28 U.S.C. § 1915A having been completed, this matter is returned to the clerk of the court for random reassignment pursuant to D.Kan.R. 40.1.

Copies of this Order shall be transmitted to plaintiff, to defendant, to the United States Attorney for the District of Kansas, and to the Finance Officer at the institution where plaintiff is currently incarcerated.

**IT IS SO ORDERED.**

Dated this 8th day of January, 2008, at Topeka, Kansas.

s/Sam A. Crow

U. S. Senior District Judge