

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ANTHONY E. JOHNSON,

Petitioner,

v.

CASE NO. 07-3292-RDR

FEDERAL BUREAU OF
PRISONS, et al.,

Respondents.

O R D E R

This court denied petitioner's application to proceed without prepayment of fees at the district court level due to the balance in his inmate account. Petitioner then filed a Notice of Interlocutory Appeal as to other portions of the court's Order (Doc. 8), and a Motion for Leave to Proceed on Appeal Without Prepayment of Fees (Doc. 11). On January 9, 2008, petitioner paid the filing fee of \$5.00 for this district court action.

This court considered petitioner's Inmate Account Statement submitted in support of his motion to proceed in forma pauperis, and erroneously assessed an initial partial appellate filing fee of \$33.50. On March 18, 2008, the Tenth Circuit Court of Appeals entered an Order pointing out that McIntosh v. U.S. Parole Commission, 115 F.3d 809, 811 (10th Cir. 1997), applies to the appeal in this case. Under McIntosh, the statutory provisions requiring an initial partial filing fee do not apply to this action brought under Section 2241.

This court therefore has reconsidered its Order dated

February 12, 2008, and rescinds its requirement therein that Mr. Johnson submit an initial partial appellate filing fee. Petitioner has been given time by the Tenth Circuit Court of Appeals to submit a motion for leave to proceed in forma pauperis on appeal or the full filing fee to that Court. He is still required to comply with the Circuit Court's order. Accordingly, this court takes no action other than to rescind its order requiring that petitioner pay the erroneously assessed initial partial appellate filing fee of \$33.50.

IT IS THEREFORE ORDERED that, upon this court's reconsideration of its Order dated February 12, 2008, petitioner is no longer required to submit an initial partial appellate filing fee of \$33.50 to this court.

The clerk is directed to transmit a copy of this Order to the finance office at the institution where petitioner is currently confined.

IT IS SO ORDERED.

DATED: This 9th day of April, 2008, at Topeka, Kansas.

s/RICHARD D. ROGERS
United States District Judge