

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Lawton v. Barajas

Lawton · No. 3:25-cv-00927-JES-AHG · Decided April 29, 2025

SUMMARY

The United States District Court for the Southern District of California dismissed Dashawn Lawton’s § 1983 action without prejudice for failure to pay the required filing fee or properly move to proceed in forma pauperis. The court granted Plaintiff 45 days to reopen the case by paying the \$405 fee or filing a compliant IFP motion and declaration.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 DASHAWN LAWTON, Case No.: 3:25-cv-00927-JES-AHG CDCR #BT-
2102, 12 ORDER DISMISSING CIVIL Plaintiff, 13 ACTION FOR FAILURE TO PAY vs.
FILING FEES REQUIRED BY 14 28 U.S.C. § 1914(a) AND/OR FOR J. BARAJAS; 15
FAILURE TO PROPERLY MOVE F. MANJARREZ, TO PROCEED IN FORMA 16 Defendants.

PAUPERIS PURSUANT TO 17 28 U.S.C. § 1915(a) 18 19 Plaintiff Dashawn Lawton, currently
incarcerated at Richard J. Donovan 20 Correctional Facility (“RJD”) in San Diego, California, and
proceeding pro se, has filed a 21 civil rights complaint pursuant to 42 U.S.C. § 1983. (See ECF
No. 1.) Plaintiff alleges 22 two RJD correctional officers destroyed his personal property during a
September 2024 23 cell search and later destroyed his legal paperwork and harassed his wife
during visitation 24 because he complained.

(Id. at 2–8.) 25 FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS 26 All parties
instituting any civil action, suit or proceeding in a district court of the 27 United States, except an
application for writ of habeas corpus, must pay a filing fee of 28 \$405. See 28 U.S.C. § 1914(a).

The action may proceed despite a plaintiff’s failure to 1 prepay the entire fee only if he is granted
leave to proceed in forma pauperis (“IFP”) 2 pursuant to 28 U.S.C. § 1915(a). See *Andrews v.*
Cervantes, 493 F.3d 1047, 1051 (9th Cir. 3 2007) (“*Cervantes*”); *Rodriguez v. Cook*, 169 F.3d
1176, 1177 (9th Cir. 1999).

However, 4 a prisoner who is granted leave to proceed IFP remains obligated to pay the entire fee
in 5 “increments” or “installments,” *Bruce v. Samuels*, 577 U.S. 82, 84 (2016); *Williams v. 6*
Paramo, 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of whether his action is 7 ultimately
dismissed. See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 8 847 (9th Cir.

2002). 9 Section 1915(a)(2) requires all persons seeking to proceed without full prepayment 10 of fees to submit an affidavit that includes a statement of all assets possessed and which 11 demonstrates an inability to pay. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015) (emphasis added).

In support of this affidavit, prisoners like Plaintiff must also 13 submit a “certified copy of the trust fund account statement (or institutional equivalent) for 14... the 6-month period immediately preceding the filing of the complaint.” 28 U.S.C. 15 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). It is from the certified 16 trust account statement that the Court assesses an initial payment of 20% of (a) the average 17 monthly deposits in the account for the past six months, or (b) the average monthly balance 18 in the account for the past six months, whichever is greater, unless he has no assets.

See 19 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the 20 prisoner then collects subsequent payments, assessed at 20% of the preceding month’s 21 income, in any month in which his account exceeds \$10, and forwards those payments to 22 the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2); *Bruce*, 577 U.S. at 23 85–86.

24 Plaintiff did not pay the filing fee required to commence a civil action when he filed 25 his Complaint, nor has he filed a Motion to Proceed IFP, which includes both the affidavit 26 required by 28 U.S.C. § 1915(a)(1) and the certified copies of his trust funds account 27 statements required by 28 U.S.C. § 1915(a)(2). While RJD has submitted prison 28 certificates and CDCR printouts of Plaintiff’s trust account activity on his behalf, see ECF 1 No. 2, this accounting, unless accompanied by a motion and affidavit submitted by 2 Plaintiff, is insufficient. “The in forma pauperis statute authorizes courts to allow ‘[1] the 3 commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, 4 or appeal therein, without prepayment of fees and costs or security therefor, by a person 5 who [2] makes affidavit that he is [3] unable to pay such costs or give security therefor.’” 6 *Rowland v. California Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 214 7 (1993) (quoting 28 U.S.C. § 1915(a)). “Section 1915(a) thus contemplates that the 8 [person] who is entitled to the benefits of the provision will have three characteristics: 9 He will have the capacity to sue or be sued, to make an affidavit, and to be unable to pay 10 court costs.” *Id.* “Such affidavit shall [also] state the nature of the action,... and affiant’s 11 belief that [he] is entitled to redress.” 28 U.S.C. § 1915(a)(1). “When a claim of poverty 12 is made under section 1915 ‘it is proper and indeed essential for the supporting affidavits 13 to state the facts as to affiant’s poverty with some particularity, definiteness and certainty.’” 14 *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir.

1981) (quoting *Jefferson v. United 15 States*, 277 F.2d 723, 725 (9th Cir. 1960)). 16 Therefore, unless Plaintiff either pays the filing fee “upfront,” *Bruce*, 577 U.S. at 86, 17 or files a properly supported Motion to Proceed IFP that includes an affidavit that meets 18 the requirements set out

in 28 U.S.C. § 1915(a)(1), his case cannot proceed. See 28 U.S.C. 19 § 1914(a); Cervantes, 493 F.3d at 1051.

20 CONCLUSION 21 Accordingly, the Court: 22 (1) DISMISSES this action without prejudice based on Plaintiff's failure to pay 23 the \$405 civil filing and administrative fee required by 28 U.S.C. § 1914(a), and his failure 24 to properly move to proceed IFP pursuant to 28 U.S.C. § 1915(a); 25 (2) GRANTS Plaintiff forty-five (45) days leave from the date of this Order to 26 re-open his case by: (a) prepaying the entire \$405 civil filing and administrative fee 27 required by 28 U.S.C. § 1914(a) in full; or (b) completing and filing a Motion and 28 Declaration in Support of Motion to Proceed IFP that complies with 28 U.S.C. 1 1915(a)(1), (2) and S.D.

Cal. CivLR 3.2.b; and 2 (3) DIRECTS the Clerk of the Court to provide Plaintiff with a Court-approved 3 "Motion and Declaration in Support of Motion to Proceed IFP" for his use and 4 \inconvenience. Should Plaintiff neither pay the \$405 filing fee in full nor sufficiently 5 complete and file the attached Motion and Declaration to Proceed IFP within 45 days, this 6 action will remained dismissed without prejudice pursuant to 28 U.S.C. § 1914(a), 7 without further Order of the Court.'

8 IT IS SO ORDERED. 9 Dated: April 28, 2025 ated: ril 28, A P Xn J., 12 Honorable James E. Sunmons Jr. 13 United States District Judge 14 15 16 17 18 19 20 21 Plaintiff 1s cautioned that if he chooses to re-open the case by either prepaying the 99 full \$405 civil filing fee, or by submitting a properly supported Motion to Proceed IFP, his Complaint will be subject to an initial review and may be dismissed sua sponte pursuant to 23 U.S.C. § 1915A(b) and/or 28 U.S.C. § 1915(e)(2)(B), regardless of whether he pays the 54 full filing fee at once, or is granted IFP status and is obligated to pay the full filing fee in installments.

See Lopez v. Smith, 203 F.3d 1122, 1126—27 (9th Cir. 2000) (en banc) (noting 25 || that 28 U.S.C. § 1915(e) "not only permits but requires" the court to sua sponte dismiss an 5 in forma pauperis complaint that is frivolous, malicious, fails to state a claim, or seeks 6 damages from defendants who are immune); see also Rhodes v. Robinson, 621 F.3d 1002, 27 || 1004 (9th Cir.

2010) (discussing similar screening required by 28 U.S.C. § 1915A of all 28 complaints filed by prisoners "seeking redress from a governmental entity or officer or employee of a governmental entity.").