

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Leon Meyers v. Edward Birdsong

No. No. 17-16907, United States Court of Appeals for the Ninth Circuit (October 11, 2023)

SUMMARY

The Ninth Circuit held that 28 U.S.C. § 1915 does not authorize or require collection of filing fees from a prisoner who is ineligible for in forma pauperis (IFP) status under the "three strikes" rule of § 1915(g). Because a struck-out prisoner cannot file an appeal IFP, the fee-collection mechanism of § 1915(b) does not apply, and any fees collected must be refunded. The court denied the untimely motion to recall the mandate and reinstate the appeal, finding no exceptional circumstances to justify that extraordinary remedy. This case clarifies that revocation of IFP status under § 1915(g) retroactively nullifies the court's authority to collect fees under the PLRA's payment plan.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Danny J. Boggs; Sidney R. Thomas; Danielle J. Forrest
JURISDICTION	Federal
DECIDED	October 11, 2023
DOCKET	No. 17-16907
DISPOSITION	other
PROCEDURAL POSTURE	Motion to recall mandate and reinstate appeal
PRECEDENTIAL VALUE	Published
PARTIES	Leon L. Meyers v. Edward M. Birdsong, Dr., R. Mack, P. Lahey, RN, A. Reynoso

TOPICS

- civil rights
- prisoners rights
- appellate procedure
- statutory interpretation
- costs

PRACTICE AREAS

- Civil Rights
- Prisoner Litigation
- Appellate Procedure

QUESTIONS PRESENTED

1. Whether the motion to recall the mandate and reinstate the appeal should be granted.

2. Whether § 1915 authorizes or requires the collection of fees from a prisoner who is ineligible for IFP status under § 1915(g).

HOLDINGS

1. The motion is untimely (661 days after mandate) and no exceptional circumstances exist because Meyers does not dispute he has three strikes and did not timely pay the filing fee. The appeal was properly dismissed.
2. Section 1915 does not authorize or require the collection of fees from a prisoner who is ineligible for IFP status under subsection (g). Therefore, the court was without authority to collect the filing fees from Meyers's prison account, and they must be returned.

KEY QUOTATIONS

“The requirement in subsection (b) that a prisoner pay the full filing fee only applies ‘if a prisoner . . . files an appeal in forma pauperis.’” (7)

“Therefore, § 1915(b) neither permits nor requires the collection of fees from a struck-out prisoner who attempts to file an appeal IFP.” (8)

“We join the D.C. Circuit in holding that a struck-out plaintiff who has been denied IFP status is not deemed to have ‘filed an appeal in forma pauperis’ when he has not been granted in forma pauperis status and his appeal has not been considered.” (8)

FACTUAL BACKGROUND

Meyers, a California state prisoner, filed a § 1983 action against state agencies and Salinas Valley Prison medical staff and officials. The district court dismissed the action, and Meyers appealed. This court initially granted IFP status, but later revoked it because Meyers had three strikes under § 1915(g). Meyers did not pay the full filing fee within the given time, so the appeal was dismissed in January 2019. His prison account continued to be debited under § 1915(b)(2) until the fee was paid in full by October 2020. Meyers then moved to recall the mandate and reinstate the appeal.

PROCEDURAL HISTORY

Meyers appealed dismissal of his § 1983 action; initially granted IFP; on appellees' motion, IFP revoked because Meyers had three strikes under § 1915(g); ordered to pay \$505 filing fee within 35 days; did not pay; appeal dismissed January 2019; prison account continued to be debited under § 1915(b)(2); fee paid in full by October 2020; Meyers moved to reinstate in November 2020.

DISPOSITION

other

REMAND INSTRUCTIONS

Direct the Clerk of the District Court to return to Meyers any fees that it collected on behalf of this court for this appeal.

CASES CITED

- Zipfel v. Halliburton Co., 861 F.2d 565 (9th Cir. 1988)
- United States v. Lozoya, 19 F.4th 1217 (9th Cir. 2021) (en banc)
- Smith v. Dist. of Columbia, 182 F.3d 25 (D.C. Cir. 1999)
- Williams v. Paramo, 775 F.3d 1182 (9th Cir. 2015)
- Harris v. Harris, 935 F.3d 670 (9th Cir. 2019)
- Dubuc v. Johnson, 314 F.3d 1205 (10th Cir. 2003)
- Khatib v. County of Orange, 639 F.3d 898 (9th Cir. 2011) (en banc)
- Tovar v. Sessions, 882 F.3d 895 (9th Cir. 2018)
- King v. Burwell, 576 U.S. 473 (2015)
- Jackson v. Stinnett, 102 F.3d 132 (5th Cir. 1996)