

John Q Public

03-25-16

My NAME is JAMES FREER
A inmate AT WAUPON CORR-
ectional institution P.O. Box 351
WAUPON WI 53963-0351

As you CAN READ THESE Judges
do not WANT to tell the whole
truth the SUPREME COURT OF
the United States RULED
that [the] MENTALLY ill [inmates]
in OUR PRISONS CANNOT BE
[WARE] HOUSED in state PRISONS.
A CALIFORNIA CASE/RULE[ing]
this WENT | ignored by KLOPPEN
BURG. Page 1



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT IV

March 16, 2016

To:

Hon. Steven G. Bauer
Circuit Court Judge
210 West Center Street
Juneau, WI 53039

Lynn M. Hron
Clerk of Circuit Court
Dodge Co. Justice Facility
210 West Center Street
Juneau, WI 53039

Kevin C. Potter
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

David C. Rice
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

James Freer 357262
Waupun Corr. Inst.
P.O. Box 351
Waupun, WI 53963-0351

Special Litigation & Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Waupun Correctional Institution
Business Office
P.O. Box 351
Waupun, WI 53963-0351

You are hereby notified that the Court has entered the following opinion and order:

2015AP415-W

State of Wisconsin ex rel. James Freer v. Circuit Court for Dodge
County and the Honorable Steven G. Bauer, presiding
(L.C. # 2015IP3)

Before Kloppenburg, P.J., Higginbotham and Sherman, JJ.

James Freer petitions for a supervisory writ of mandamus compelling the circuit court to grant his request to commence an action for injunctive relief in the circuit court without prepayment of the filing fee. *See State ex rel. Staples v. DHSS*, 130 Wis. 2d 285, 287, 387 N.W.2d 118 (Ct. App. 1986). The subject of Freer's lawsuit is that he is being endangered by

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the large number of mentally ill prisoners in the general population of his facility—including a cellmate who has attacked him.

As a threshold matter, we note that Freer initially submitted the circuit court's indigency forms to this court rather than our own forms. However, Freer subsequently submitted the proper affidavit of indigency, along with an authorization to withhold money from his trust account to pay the filing fee. Later, Freer filed a "three strikes" certification, explaining that the delinquency on that document was beyond his control because prison officials would not provide him with the legal loan he needed to obtain the certification. Freer did not submit a certified copy of his trust account statement, but we note that he is excused from doing so in light of his credible allegation of imminent harm from his cellmate. *See* WIS. STAT. § 814.29(1m)(f). Accordingly, we grant Freer's petition to waive prepayment of the filing fee in this matter, and direct the clerk of this court to process Freer's authorization for incremental payment of the filing fee.

Turning to the merits of the instant *Staples* petition, this court will not issue a supervisory writ unless the circuit court has clearly violated a plain legal duty and the party seeking relief has acted promptly and faces grave hardship or irreparable harm for which there is no other adequate remedy at law. *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶17, 271 Wis. 2d 633, 681 N.W.2d 110.

If a litigant is a "prisoner" as defined in WIS. STAT. § 801.02(7)(a)2, a petition for a fee waiver must include the items required by WIS. STAT. § 814.29(1m)(b) and (c)—that is, an affidavit of indigency in the proscribed form; a certified copy of the prisoner's trust account statement; and an authorization for prison officials to deduct the filing fee from the prisoner's

trust account statement. Additionally, if the prisoner is seeking relief from prison conditions, the prisoner shall also attach sufficient documentation to demonstrate exhaustion of all available administrative remedies. WIS. STAT. § 801.02(7)(c). When the required documentation is submitted, the circuit court has a plain legal duty to waive prepayment of the filing fee and the prisoner pays the filing fee on an installment basis. *State ex rel. Adell v. Smith*, 2001 WI App 168, ¶4 n.3, 247 Wis. 2d 260, 633 N.W.2d 231. However, if the required documentation is not filed, the circuit court has no duty to grant the fee waiver, and should instead deny the petition and dismiss the complaint. WIS. STAT. § 814.29(1m)(g).

Here, the circuit court denied the requested fee waiver on the multiple grounds that: (1) Freer had failed to provide; (1) evidence of exhaustion of administrative remedies; (2) a DOJ certification as to prior dismissals; and (3) sufficient copies of the pleadings. Freer contends that the circuit court erred in denying his petition for a fee waiver without first addressing his request for an order directing prison officials to extend him an additional legal loan to pay for copies of the materials he was required to submit; and without evaluating his allegation that he was in imminent danger of harm.

We need not address Freer's complaints regarding legal loans and imminent danger, because the record supports the circuit court's determination that Freer had failed to exhaust his administrative remedies.

Freer submitted a copy of an Information Request form in which he had asked DOC officials whether he had exhausted all of his administrative remedies by requesting a cell change from four specified prison officials. The response he received was, "Again, Freer, your cell change is denied at this time." While we appreciate that Freer made some attempt at seeking

administrative relief, it was not sufficient. The Inmate Complaint Review System (ICRS) affords inmates a procedure for raising civil rights grievances. *See* WIS. ADMIN. CODE §§ DOC 310.01(2)(h) and 310.08(1). Therefore, an inmate is required to file an ICRS complaint and follow through on the administrative review process before filing a lawsuit in circuit court seeking redress of prison conditions.

Because Freer did not submit documentation showing that he had filed an ICRS complaint, the circuit court properly denied his petition to waive the filing fee for Freer's lawsuit.

Therefore,

IT IS ORDERED that the petition for a supervisory writ directing the circuit court to permit Freer to commence his action without prepayment of the filing fee is denied.

Diane M. Fremgen
Clerk of Court of Appeals

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