

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

TIMOTHY WILLIAM EDGAR,

Plaintiff,

-vs-

Case No. 5:15-cv-621-Oc-10PRL

JASON HUNT, et. al.,

Defendants.

ORDER

This case is before the Court on a limited remand from the Eleventh Circuit Court of Appeals to address Plaintiff's Motion to Reopen the Appeal Period pursuant to Rule 4(a)(6) of the Federal Rules of Appellate Procedure.¹ The Court of Appeals stated that because Plaintiff "may not have received the formal notice of the February 28, 2017 order and judgment within the 21 days of its entry, [the Court of Appeals] construe[s] his untimely Notice of Appeal as a Motion to Reopen the Appeal Period under Fed.R.App. 4(a)(6). (Doc. 26; citing Sanders v. United States, 113 F.3d 184, 187 (11th Cir. 1997)).

By Order dated August 15, 2017, the District Court referred the matter to the United States Magistrate Judge to conduct any and all proceedings deemed necessary and appropriate for the issuance of a Report and Recommendation responsive to the direction of the Court of Appeals. (Doc. 27). On September 14, 2017, the United States Magistrate Judge entered the Order recommending that the Court grant Plaintiff's Motion to Reopen the Appeal Period. (Doc. 29). Defendant did not file an objection to the recommendation and the time for doing so has expired.

¹ The Eleventh Circuit Court of Appeals construed Plaintiff's Notice of Appeal as a Motion to Reopen the Appeal Period. (Doc. 26).

Accordingly, upon due consideration, the United States Magistrate Judge's Report and Recommendation (Doc. 29) is **ADOPTED, CONFIRMED, AND MADE A PART HEREOF**. Plaintiff's Notice of Appeal is deemed timely filed.

While the Notice of Appeal is timely, Plaintiff's Motion for Leave to Proceed on Appeal *In Forma Pauperis* (Doc. 28) is **DENIED**. The Court finds that Plaintiff's appeal is not taken in good faith. See 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A). Plaintiff is not required to pay the initial partial filing fee as provided in 28 U.S.C. § 1915(b)(1)(A); however, Plaintiff is hereby assessed the \$505.00 appellate filing and docketing fees in this case. Plaintiff shall be required to make monthly payments of 20 percent of his preceding month's income credited to his account. The agency having custody of Plaintiff shall forward these payments from the Plaintiff's account to the Clerk of the Court each time the amount in the account exceeds \$10, until the filing fees are paid in full.

Plaintiff shall make these payments to the Clerk of the Court with a check from a penal institution, a cashier's check, or a money order made payable to "Clerk, U.S. District Court." The following information shall either be included or attached thereto: (1) the full name of the prisoner; (2) the prisoner's inmate number; and, (3) Middle District of Florida Case Number. Checks or money orders which do not have this information will be returned to the penal institution.

Plaintiff is warned that he is ultimately responsible for full payment of the appellate filing and docketing fees should the agency with custody over him lapse in its duty to make payments on his behalf. For this reason, if Plaintiff is transferred to another institution, he should ensure that the new institution is informed about this

appeal and the required monthly payments as set out herein. Plaintiff is advised to retain a copy of this Order for this purpose. The **Clerk** is directed to send a copy of this Order to the Budget and Accounting Officer at Plaintiff's current place of incarceration.

Finally, Plaintiff's Motion for an Appointment of Counsel (Doc. 30) is **DENIED**. As Defendant correctly states in the opposition to the motion (Doc. 31), the Eleventh Circuit has retained jurisdiction over the matter during the limited remand.² This Court does not have jurisdiction to consider the request. Plaintiff should submit his motion directly to the Court of Appeals.

IT IS SO ORDERED.

DONE and ORDERED at Ocala, Florida this 9th day of January, 2017.



UNITED STATES DISTRICT JUDGE

Copies to: Timothy William Edgar
Counsel of Record

² See Doc. 26, pg. 3.