NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 5, 2025*
Decided March 12, 2025

Before

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1656

LEONARDO MCCRAY, *Plaintiff-Appellant*,	Appeal from the United States District Court for the Central District of Illinois.
v.	No. 24-CV-4034
GREG DONATHAN, et al. *Defendants-Appellees*.	James E. Shadid, *Judge*.

No. 24-1657

LEONARDO MCCRAY, *Plaintiff-Appellant*,	Appeal from the United States District Court for the Central District of Illinois.
v.	No. 24-CV-4050

* The appellees were not served with process and are not participating in these appeals. We have agreed to decide the cases without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

GREG DONATHAN and CODY D. WATERKOTTE,
Defendants-Appellees.

Joe Billy McDade,
Judge.

O R D E R

In this consolidated appeal, Leonardo McCray, a civil detainee, challenges orders in two district court cases denying his motions for leave to proceed without prepaying filing fees. For the reasons that follow, we affirm in part, vacate in part, and remand for further proceedings.

McCray is held at the Treatment and Detention Facility in Rushville, Illinois, under the Illinois Sexually Violent Persons Commitment Act. 725 ILCS 207/40. Separately, he faces criminal charges stemming from a fight at the facility. In early 2024, he filed two lawsuits alleging that facility and government officials violated his constitutional rights. *See* 42 U.S.C. § 1983. The first suit alleged that facility officials unconstitutionally confiscated his personal property and denied him services, and that the judge in his criminal case is conspiring with facility officials to convict him. The second suit alleged, similarly, that facility officials unconstitutionally confiscated even more personal property to punish him for his pending criminal charges.

McCray moved in both cases for leave to proceed in forma pauperis ("IFP"). *See* 28 U.S.C. § 1915. He supplemented the motions with ledger sheets from his trust account, representing that he had no steady income and only $0.64 in his account. The ledger sheets showed that in the six months preceding his first lawsuit, he had an average monthly income of $288.83. In the six months preceding his second lawsuit, his average monthly income was $291.34. The district judges granted his motions, requiring him to prepay a percentage of the standard filing fee. They set fees as 50% of McCray's monthly income during the six months preceding each suit.

McCray moved for a waiver of the partial filing fee. He informed the judges that he had criminal charges pending against him; that he was locked in his cell for 23 hours a day without steady income; and that his past income came from lawsuit settlements. In nearly identical orders, both judges denied his requests for a waiver, stating that courts may impose modest fees on indigent individuals. They noted that he withdrew approximately $1,000 from his trust account each month leading up to his lawsuits. They also pointed to his pattern of litigating without paying fees: two suits in early 2023 when he was assessed no filing fee, and two suits in late 2023 when he was assessed

filing fees that he had yet to pay. The judges found "notable" McCray's practice to avoid filing lawsuits when he had significant funds that could subject him to filing fees.

McCray appeals the district judges' orders, but we pause to address our appellate jurisdiction. An order denying an IFP application is immediately appealable under 28 U.S.C. § 1291. *Roberts v. U.S. Dist. Ct. for N. Dist. of Cal.*, 339 U.S. 844, 845 (1950); *Turley v. Gaetz*, 625 F.3d 1005, 1007 n.3 (7th Cir. 2010). Here, however, McCray's IFP applications were granted in part, rather than denied altogether. (Only his request for a waiver of the filing fee was denied.) But as in a case where the IFP application is denied altogether, McCray may not proceed unless he pays his initial partial filing fees, reduced as they may be. And he asserts he is unable to pay the partial fee, so we presume that his case will be dismissed. We thus conclude that a grant of IFP status accompanied by a partial filing fee is a final order over which we have jurisdiction under § 1291. *Accord Hymas v. U.S. Dep't of the Interior*, 73 F.4th 763, 765 (9th Cir. 2023); *see also Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949) (final-judgment requirement of § 1291 should be given "a practical rather than a technical construction").

With jurisdiction secure, we turn to the district judges' orders. The judges concluded that McCray, as a civil detainee, is not a prisoner within the meaning of the Prison Litigation Reform Act ("PLRA"). *See* 28 U.S.C. § 1915(h). The PLRA, of course, imposes certain filing requirements on prisoners who wish to proceed IFP. *E.g.*, § 1915(b). It governs all civil lawsuits brought by prisoners, *see* § 1915(a), and the term "prisoners" includes anyone like McCray who is housed in a facility while facing criminal charges. § 1915(h). Civil detention facilities, like Rushville, are "facilities" within the meaning of § 1915(h). *Kalinowski v. Bond*, 358 F.3d 978, 978–79 (7th Cir. 2004). We have categorized detainees in such facilities two ways: those who are detained with pending criminal charges and those who are detained even after the end of their criminal sentence because of "future dangerousness." *Id.* at 979. The crimes McCray allegedly committed at Rushville, for which he is currently awaiting trial, put him in the first category and render him a prisoner under § 1915(h). *See id.* ("Pretrial detainees are prisoners for purposes of the PLRA because they are in custody while accused of … violations of criminal law.") (cleaned up).[†]

[†] Though neither docket specifies why McCray is detained, prior judicial records reflect that he is civilly detained under the Illinois Sexually Violent Persons

McCray's prisoner status means that, if he wants to proceed without prepaying his filing fees, he must satisfy the requirements of § 1915(b)(4). Under that statute, if a prisoner lacks both assets and means to pay the initial filing fee, the "case proceeds despite the lack of payment." *Sultan v. Fenoglio*, 775 F.3d 888, 890 (7th Cir. 2015) (citation omitted). But if a court finds that the prisoner depleted his assets to circumvent paying a filing fee, then the court may require prepayment. *Thomas v. Butts*, 745 F.3d 309, 312 (7th Cir. 2014).

McCray essentially challenges the judges' conclusion that he sought to circumvent the filing fees; he now asserts for the first time that he spent his money on necessities like legal books and did not expect to file another lawsuit. But the judges did not clearly err by concluding otherwise. His trust ledgers showed that even though he made regular and significant deposits to his account over the past six months, he held off filing suits like this one until his balance was low. Moreover, we will not consider evidence that was not presented to the district court, *see Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 2 F.4th 1002, 1013 (7th Cir. 2021), and McCray did not provide the judges with the evidence or explanation that he presents here.

The filing-fee assessments in McCray's cases did not account for his status as a prisoner within the meaning of the PLRA, which sets forth a formula to assess the initial fee for prisoners proceeding IFP—"the greater of 20% of the average monthly deposit or 20% of the average monthly balance for the six preceding months." *Thomas*, 745 F.3d at 312 (citing 28 U.S.C. § 1915(b)(1)). The filing fees in these cases should be adjusted on remand.

We AFFIRM the decisions denying McCray leave to proceed without paying partial filing fees but VACATE the orders and REMAND with instructions to impose the fees in accordance with § 1915(b).

Commitment Act. *McCray v. Doe*, No. 20-4248-JBM, 2021 WL 861701, at *1 (C.D. Ill. Mar. 8, 2021). This court has noted but not decided whether one's status as a civil detainee renders the individual a prisoner. *See Kalinowski*, 358 F.3d at 978–79 (citing § 1915(h)). Regardless, as explained, the pending charges for crimes allegedly committed at Rushville render McCray a prisoner.