

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 96-2602

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|------------------------------------|-------------|
| Matthew Joseph Sikora, Jr., | * |
| | * |
| Appellant, | * |
| | * |
| v. | * |
| | * |
| Frank X. Hopkins, Warden, in | * |
| his individual and official | * |
| capacity; Nebraska State | * |
| Penitentiary; Joel Staley, "D" | * |
| Unit Manager in his individual | * |
| and official capacity; Phil | * |
| Jefferson, Mental Health Staff | * |
| Personnel, in his individual and * | (PUBLISHED) |
| official capacity; Rick | * |
| Hargreaves, Mental Health Staff | * |
| Personnel, in his individual and * | * |
| official capacity; John Does, | * |
| in their individual and official * | * |
| capacities, | * |
| | * |
| Appellees. | * |

Submitted: March 14, 1997

Filed: March 31, 1997

Before BOWMAN, LOKEN, and HANSEN, Circuit Judges.

PER CURIAM.

Matthew Sikora, Jr., seeks to appeal the district court's¹ order applying the fee provisions of the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), in his 42 U.S.C. § 1983 action. We construe Sikora's appeal from a non-final order as a petition for writ of mandamus.

Because Sikora was not granted leave to proceed in forma pauperis (IFP) until May 13, 1996--following the April 26, 1996 enactment of the PLRA--we find no error in the district court's application of the PLRA's fee provisions to Sikora, even though he submitted his complaint and IFP motion prior to the PLRA's effective date. Cf. Thurman v. Gramley, 97 F.3d 185, 188-89 (7th Cir. 1996) (appeal lodged prior to enactment of PLRA, but ineffective because appellant lacked IFP status, is not filed until IFP motion is decided).

Accordingly, Sikora's petition for a writ of mandamus is denied. We appreciate counsel's willingness to accept appointment in this matter and thank her for the services she has rendered.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

¹The Honorable Richard G. Kopf, United States District Judge for the District of Nebraska, sustaining the memorandum and order of the Honorable David L. Piester, United States Magistrate Judge for the District of Nebraska.