

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

EDMOND GASAWAY,

Plaintiff,

-against-

9:11-CV-1223 (LEK/DEP)

BUREAU OF PRISONS,

Defendant.

EDMOND GASAWAY,

Plaintiff,

-against-

9:11-CV-1272 (LEK/DEP)

RUSSELL PERDUE, *et al.*,

Defendants.

DECISION and ORDER

Plaintiff Edmond Gasaway (“Plaintiff”), an inmate in the custody of the Federal Bureau of Prisons, commenced these actions *pro se* asserting claims arising during his confinement at FCI Ray Brook. See Gasaway v. Bureau of Prisons, No. 9:11-CV-1223 (LEK/DEP) (“Gasaway I”), Dkt. No. 1 (“Complaint I”); Gasaway v. Perdue, No. 9:11-CV-1272 (LEK/DEP) (“Gasaway II”), Dkt. No. 1 (“Complaint II”). Plaintiff was granted leave to proceed *in forma pauperis* (“IFP”) in each action, and service of process was effected on Defendants in January and February, 2012. Gasaway I, Dkt. No. 5; Gasaway II, Dkt. No. 6.

In lieu of filing responses to the Complaints, Defendants moved to revoke Plaintiff’s *in forma pauperis* status. Gasaway I, Dkt. No. 12; Gasaway II, Dkt. No. 10. Defendants argued that Plaintiff

was barred from proceeding *in forma pauperis* pursuant to the three strikes provision of 28 U.S.C. §1915(g) and, alternatively, urged the Court to revoke his IFP status in the exercise of its discretionary authority to curb abusive litigants. See Gasaway I, Dkt. No. 12-1 at 3, 13-17; Gasaway II, Dkt. No. 10-1 at 3, 13-17.

On May 30, 2012, this Court issued Decisions and Orders in these cases, granting Defendants' Motions and revoking Plaintiff's IFP status. Gasaway I, Dkt. No. 22 ("May Order I"); Gasaway II, Dkt. No. 24 ("May Order II") (collectively, the "May Orders"). Plaintiff was afforded thirty days in which to pay the \$350.00 filing fee in full if he wished to avoid dismissal of the actions. May Order I at 6; May Order II at 7-8.

In a Letter dated June 5, 2012, Plaintiff notified the Court that he did not "object" to the May Orders. Gasaway I, Dkt. No. 23; Gasaway II, Dkt. No. 25 ("Letter").¹ Plaintiff requests, however, that any and all funds withdrawn from his prison account be reimbursed and placed back in to his account." Id. Plaintiff further requests an order directing the appropriate officials at the facility in which he is incarcerated to discontinue withdrawals pursuant to the inmate authorization forms he had submitted. Gasaway I, Dkt. No. 24; Gasaway II, Dkt. No. 26 ("Letter Motion"). Plaintiff did not timely pay the filing fee in either action.

Plaintiff initially requested that funds paid towards the filing fee be reimbursed to his prison account and his remaining indebtedness canceled in an Objection to the Report-Recommendation issued by United States Magistrate Judge David E. Peebles in Gasaway II. See Gasaway II, Dkt. No. 22 ("Objection"). In his Objection, Plaintiff requested that upon revocation of his IFP status, all "funds

¹ Plaintiff filed a single Letter, listing the captions of both of his pending cases. Because the issue in both cases is identical, the Court addresses both cases in the same Decision and Order.

in relation to this action . . . [be] returned to his prison account without prejudice.” Id. In denying that request, the Court stated that:

Pursuant to the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915(b), a party proceeding in forma pauperis is required to pay the full \$350.00 filing fee, regardless of the outcome of the action. See, e.g., Goins v. DeCaro, 241 F.3d 260, 262 (2d Cir. 2001) (inmate who withdraws his appeal is not entitled to a refund of the filing fee paid or a cancellation of the remaining indebtedness); Williams v. Roberts, 116 F.3d 1126, 1127-28 (5th Cir. 1997) (plain language of the PLRA requires court to assess filing fees once matter is filed, regardless of ultimate outcome of proceeding) (citations omitted); McGore v. Wrigglesworth, 114 F.3d 601, 605 (6th Cir. 1997) (“[B]y filing the complaint or notice of appeal, the prisoner waives any objection to the fee assessment . . .”).

Additionally, the authorization form that Plaintiff signed when he commenced this action in forma pauperis expressly stated that “I understand that the total filing fee which I am obligated to pay is \$350.00. I also understand that this fee will be debited from my account regardless of the outcome of my lawsuit.” [Gasaway II,] Dkt. No. 5. Therefore, regardless of Plaintiff’s sense that his litigation may not be progressing successfully, see Pl.’s Obj. at 1, the Court cannot return funds to his account.

May Order II at 4-5 (footnote omitted).²

Because Plaintiff’s Letter and Letter Motion raise arguments identical to those advanced in his Objections, the reasoning set forth in the May Order in Gasaway II applies here. Therefore, Plaintiff’s requests that any funds paid to date with respect to the filing fees for these actions be reimbursed to his prison account and that his remaining indebtedness be cancelled are denied. In addition, because Plaintiff did not timely pay the filing fees as directed by the Court, these actions are dismissed and the Clerk is directed to enter judgment accordingly.

² The Court noted, moreover, that although Plaintiff’s Objection was not docketed in Gasaway I, the Court also lacked authority to return funds collected in payment of the filing fee in that action. May Order II at 4 n.2.

Accordingly, it is hereby:

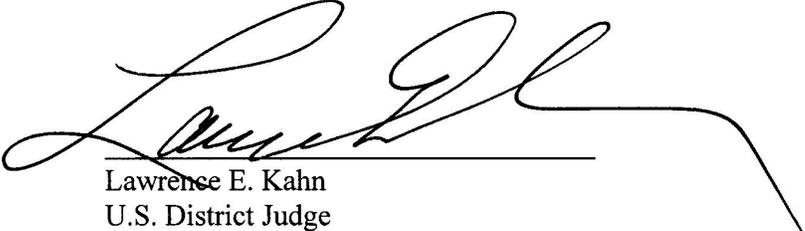
ORDERED, that Plaintiff's Letter (Gasaway I, Dkt. No. 23; Gasaway II, Dkt. No. 25) and Letter Motion (Gasaway I, Dkt. No. 24; Gasaway II, Dkt. No. 26) requesting that any funds paid to date with respect to the filing fees for these actions be reimbursed to his prison account and that his remaining indebtedness be cancelled are **DENIED**; and it is further

ORDERED, that Gasaway I and Gasaway II are **DISMISSED** due to Plaintiff's failure to pay the filing fees in full and that the Clerk enter judgments of dismissal accordingly; and it is further

ORDERED, that the Clerk serve a copy of this Decision and Order on the parties.

IT IS SO ORDERED.

DATED: August 06, 2012
Albany, New York



Lawrence E. Kahn
U.S. District Judge