



Tustin v. Livingston et al

2017 | Cited 0 times | S.D. Texas | January 4, 2017

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION GEORGE EDWARD TUSTIN, JR., §

§ § § § § § § TDCJ #00443411, Plaintiff, VS. CIVIL ACTION NO. 3:12-CV-22 BRAD LIVINGSTON, et al., Defendants.

ORDER Plaintiff George Edward Tustin, Jr. (TDCJ #00443411), an inmate in the custody of the Texas Department of Criminal Justice - Correctional Institutions Division pro se civil rights complaint under 42 U.S.C. § 1983 and Texas state law alleging that he was denied dental care in violation of his Constitutional rights. The federal claims under 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim on which relief may be granted and dismissed his state-law claims without prejudice pursuant to 28 U.S.C. § 1367(c)(3) (Dkt. 93 and Dkt. 94).

Tustin is now requesting leave to proceed in forma pauperis (Dkt. 100). The Court DENIES the motion and certifies, pursuant to Federal Rule of

Circuit is not taken in good faith. trial court certifies in writing that it i see also FED. R. APP. P. 24(a)(3)(A). Under the objective test enunciated in Coppedge v.

United States District Court Southern District of Texas

ENTERED January 04, 2017 David J. Bradley, Clerk United States, 369 U.S. 438, 445 (1962), an appeal is not taken in good faith if it seeks on which relief could be granted.

Tustin has the right to challenge this finding under Baugh v. Taylor, 117 F.3d 197 (5th

Cir. 1997), by filing a separate motion to proceed IFP on appeal with the Clerk of Court, United States Court of Appeals for the Fifth Circuit, within 30 days of this order. Baugh, 117 F.3d at 202. However, the Fifth Circuit has assigned a docket number (16-41724) to the fee discussed in footnote 22 of the Baugh opinion will be assessed -faith finding. Branum v. Fontenot Williams v. Roberts, 116 F.3d 1126, 1128 (5th Cir. 1997).

Accordingly, the Court further ORDERS that the appellate case docketing fee be



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on the certified inmate trust account statement provided by Tustin, the Court ORDERS that:

1. Tustin is assessed an initial partial filing fee of \$0.06. 2. Tustin shall pay the remainder of the filing fee in periodic installments as required by 28 U.S.C. § 1915(b)(2) until the entire appellate filing fee of \$505.00 has been paid. The agency having custody of Tustin shall collect the amount of the appellate filing fee from trust account or institutional equivalent and forward it to the Clerk of the District Court in compliance with the terms of this Order.

Pursuant to Federal Rule of Appellate Procedure 24(a)(4), the Clerk of this Court shall send a copy of this Order to the parties and to the Clerk of Court of the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit docket number is 16- 41724.

The Clerk of this Court shall also mail a copy of this Order to (1) the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629 and (2) the TDCJ Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas 78711. SIGNED at Galveston, Texas, this 4 th

day of January, 2017.

_____ George C. Hanks Jr. United States District Judge

