

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 04-173

GARY E. RADI and VICTOR A. SMITH,

Petitioners,

v.

MARC G. BUYSKE, Judge, Ninth Judicial District
Court; BILL SLAUGHTER, Director, Department
of Corrections; PAT SMITH, Bureau Chief-MDOC;
JERRY JOHNSON, Contract Manager-MDOC;
ROBERT PAUL, Contract Monitor-MDOC; JOHN
FERGUSON, President, CEO, Corrections Corporation
of America; JAMES MacDONALD, Warden,
Crossroads Correctional Center,

Respondents.

ORDER

FILED

APR 21 2004

*Ed Smith*CLERK OF THE SUPREME COURT
STATE OF MONTANA

Gary Radi and Victor Smith have filed a petition for a writ of supervisory control asking this Court to overrule Judge Buyske's refusal to allow them to proceed in forma pauperis in District Court. They allege that the District Court has refused to allow them to proceed in forma pauperis due to their failure to provide certified copies of their prisoner trust fund accounts as required by § 25-10-404(5), MCA. They further allege that, despite their requests, the Crossroads Correctional Center accounting department has failed to provide certified copies of their accounts.

On March, 23, 2004, we ordered the Attorney General's office to file a response to the petition. As of April 7, 2004, the Attorney General responded and indicated that the issue has been addressed and that Crossroads Correctional Center has agreed to use a certification form to verify trust account balances and has provided such a certification for both Radi and Smith. We deem the certification form appended to the Attorney General's response to be sufficient to meet the demands of § 25-10-404(5), MCA.

Since the Petitioners' accounts have now been certified as required by law, it is necessary that this matter be remanded to the District Court so that the court may reconsider the petitions to proceed in forma pauperis.

IT IS THEREFORE ORDERED THAT:

1. Petitioners' request for a writ of supervisory control is granted, and the District Court is directed to reconsider their petitions to proceed in forma pauperis in light of their certified prisoner account records.

2. The Clerk is directed to mail copies hereof to Petitioners personally and to counsel of record for Respondents.

DATED this 20th day of April, 2004.

Karla M. Gray
Chief Justice
W. William Tappan
Jane Rogers
John Warner
Patricia Cotton
Justices

April 21, 2004

CERTIFICATE OF SERVICE

I hereby certify that the attached document was sent by United States mail, prepaid, to the following named:

GARY E RADI AO# 12041 -
CROSSROADS CORRECTIONAL CTR
PO BOX 916
SHELBY MT 59474-0916

Sandra Piers
Clerk of SC

VICTOR A SMITH AO# 45480 -
CROSSROADS CORRECTIONAL CTR
PO BOX 916
SHELBY MT 59474-0916

HON MIKE MCGRATH ATTORNEY GENERAL -
JENNIFER ANDERS ASSISTANT
PO BOX 201401
HELENA MT 59620-1401

HON MARC G BUYSKE -
DISTRICT COURT JUDGE
PO BOX 822
SHELBY MT 59474-0822

DIANA LEIBINGER KOCH -
DEPT OF CORRECTIONS
PO BOX 201301
HELENA MT 59620-1301

DANIEL J HOVEN & SARA B STANTON -
BROWNING KALECZYC BERRY & HOVAN
PO BOX 1697
HELENA MT 59624-1697

ED SMITH
CLERK OF THE SUPREME COURT

STATE OF MONTANA

BY: D. Gallagher
Deputy