

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

JAMES WILLIAM KILPATRICK, III

PLAINTIFF

vs.

Civil No. 1:16-cv-01014

CAROLYN W. COLVIN

DEFENDANT

Commissioner, Social Security Administration

ORDER

Pending now before this Court is Defendant's Motion to Dismiss. ECF No. 8.¹ Plaintiff has responded to this motion. ECF No. 9. The parties have consented to the jurisdiction of a magistrate judge to conduct any and all proceedings in this case, including conducting the trial, ordering the entry of a final judgment, and conducting all post-judgment proceedings. ECF No. 7.

In her Motion to Dismiss, Defendant claims this action should have been filed on or before February 17, 2016 to be considered timely. ECF No. 8. Defendant claims this action was not filed until February 29, 2016. Accordingly, Defendant claims this action was filed late. Because it was filed late, Defendant claims it should be dismissed.

In response, Plaintiff claims this action was mailed to the U.S. Clerk's Office on January 27, 2016, well before the deadline of February 17, 2016. ECF No. 9. With his response, Plaintiff attached the affidavit of Kelley Hooker stating she placed the Original Petition in the care of the United States Postal Service on January 27, 2016. ECF No. 9-1. The Court has also reviewed the filings in this matter. The *in forma pauperis* application is dated January 15, 2016 and the Civil Cover Sheet is dated January 27, 2016. ECF Nos. 2, 3.

Accordingly, because it appears the delay in receiving this complaint was due to a possible

¹ The docket numbers for this case are referenced by the designation "ECF. No."

delay in delivery by the U.S. Postal Service, and because it appears Plaintiff did in fact mail the Complaint prior to the deadline of February 17, 2016, extraordinary circumstances are present here that would justify extending the sixty day period. Therefore, the Court finds Plaintiff's action was timely filed, and Defendant's Motion to Dismiss (ECF No. 8) should be denied.

3. Conclusion:

Based on the foregoing, Defendant's Motion to Dismiss (ECF No. 8) is **DENIED**.

ENTERED this **14th day of June 2016**.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
U.S. MAGISTRATE JUDGE