

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

JOE MARTINEZ,

Petitioner,

v.

Case No.: 2:18-cv-652-FtM-38MRM

SECRETARY, DEPARTMENT OF  
CORRECTIONS and ATTORNEY  
GENERAL, STATE OF FLORIDA,

Respondents.

---

**OPINION AND ORDER**<sup>1</sup>

This matter is before the Court on sua sponte review of the record. Petitioner initiated this action by filing a Petition for Writ of Habeas Corpus pursuant to [28 U.S.C. § 2254](#). ([Doc. 1](#)). Petitioner did not accompany the filing of his Petition with the \$5.00 filing fee or a motion to proceed in forma pauperis. See [28 U.S.C. §§ 1914\(a\)](#), 1915 (a)(1).

In the Court's Standing Order, ([Doc. 6](#)), Petitioner was cautioned that under M.D. Fla. Rule 1.03(e), he would be required to pay the Court's \$5.00 filing fee or file a motion to proceed in forma pauperis or his case could be dismissed without further notice.<sup>2</sup> On

---

<sup>1</sup> Disclaimer: Documents filed in CM/ECF may contain hyperlinks to other documents or websites. These hyperlinks are provided only for users' convenience. Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees. By allowing hyperlinks to other websites, this Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their websites. Likewise, the Court has no agreements with any of these third parties or their websites. The Court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the Court.

<sup>2</sup> The Local Rule reads in pertinent part: "[a] prisoner case will be subject to dismissal by the Court, sua sponte, if the filing fee is not paid or if the application [to proceed in forma

August 19, 2019, the Court directed Petitioner to show cause why he failed to comply with the Court's Standing Order. ([Doc. 8](#)). To date, Petitioner has not responded, paid the Court's filing fee, or moved to proceed in forma pauperis.

The Court has taken reasonable steps to provide Petitioner an opportunity to respond to the Court's Orders and Petitioner was put on notice that the case would be dismissed if he failed to comply. The Local Rules of this Court provide that "[w]henver it appears that any case is not being diligently prosecuted the Court may, on motion of any party or on its own motion, enter an order to show cause why the case should not be dismissed, and if no satisfactory cause is shown, the case may be dismissed by the Court for want of prosecution." M.D. Fla. R. 3.10(a).

The Court finds that Petitioner has failed to prosecute this case and that the case is due to be dismissed. Because the Court is dismissing this action without prejudice, Petitioner may file a new petition if he wishes to pursue his claim. Petitioner is cautioned that the statute of limitations on filing a petition for habeas corpus as set forth in [28 U.S.C. § 2244\(d\)\(1\)](#) is not stayed and will continue to run while he has no case pending before the Court.

Accordingly, it is now

**ORDERED:**


1. Petitioner Joe Martinez's Petition for Writ of Habeas Corpus pursuant to [28 U.S.C. § 2254](#) ([Doc. 1](#)) is **DISMISSED** without prejudice.

---

pauperis] is not filed within 30 days of the commencement of the action." M.D. Fla. Rule 1.03(e).

2. The Clerk of Court shall enter judgment accordingly, terminate any pending motions and deadlines, and close the file.

**DONE** and **ORDERED** in Fort Myers, Florida this 30th day of October 2019.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

SA: FTMP-2

Copies: All Parties of Record