

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

DARRELL LEATH,
Petitioner,

vs.

Case No. 3:07cv64/MCR/EMT

STATE OF FLORIDA,
Respondent.

ORDER

This cause is before the court upon Petitioner's filing a handwritten petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1).¹ The court notes that Petitioner has neither applied for leave to proceed in forma pauperis nor paid the filing fee. Before this matter may proceed, Petitioner must either pay the filing fee or obtain leave to proceed in forma pauperis by filing a fully and properly completed application and attachments.

Additionally, Petitioner, an inmate in custody pursuant to a state court judgment, failed to use the court-approved form for filing his habeas petition. Local Rule 5.1(J) for the Northern District of Florida states that the court will not accept an for consideration an application for writ of habeas corpus under section 2254 unless the appropriate petition form is properly completed and filed. Thus, Petitioner must file an amended petition on the form for use in section 2254 cases. Petitioner is advised that the amended petition must contain all of his allegations, and it should not in any way refer to the original petition. Once an amended petition is filed, all earlier petitions are disregarded. N.D. Fla. Loc. R. 15.1.

¹The court notes that Petitioner's petition concerns the status of "Jessica and Max." Petitioner requests that "[i]n case Ms. Rhonda Wells goes to prison could [the court] please place Jessica and Max in my family's custody until she gets out. Please do not send these [children] to Duval County[;] they will not do anything about this." Petitioner is advised he may not dispute the custody of minor children in a § 2254 action, and the relief he seeks is unavailable in such an action. Therefore, if Petitioner determines that he does not wish to proceed with this habeas action, he shall file a notice of voluntary dismissal.

Accordingly, it is **ORDERED**:

1. The clerk is directed to send to Petitioner an application to proceed in forma pauperis.
2. Within **THIRTY (30) DAYS** from the date of docketing of this order, Petitioner shall either pay the filing fee of \$5.00 or submit a fully completed application to proceed in forma pauperis.
3. The clerk shall send Petitioner a copy of the form for use in Section 2254 cases. This case number should be written on the form.
4. Within **THIRTY (30) DAYS** from the date of docketing of this order, Petitioner shall file an amended petition as instructed in this order. Petitioner should completely fill out the new petition form, marking it "Amended Petition." The amended petition should not refer to the original petition. Alternatively, Petitioner shall file a notice of voluntary dismissal within the same time.
5. Petitioner's failure to comply with this order may result in a recommendation of dismissal of this action for failure to comply with an order of the court.

DONE AND ORDERED this 16th day of February 2007.

/s/ Elizabeth M. Timothy _____
ELIZABETH M. TIMOTHY
UNITED STATES MAGISTRATE JUDGE