

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

NEIL E. RIVERS,
Petitioner,

vs.

Case No.: 3:08cv418/RV/EMT

WALTER A. MCNEIL,
Respondent.

ORDER

Petitioner has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, as well as a motion to proceed in forma pauperis, and a Certificate Regarding Inmate Account with an attached printout of the activity in his inmate account for the six-month period preceding the filing of the petition (Docs. 1, 2). From a review of the inmate bank account records, Petitioner had an average monthly amount of \$11.83 deposited into his prison account and spent most of those deposits on canteen sales. Therefore, Petitioner shall be required to pay the \$5.00 fee.

Additionally, Petitioner has not named the proper party as Respondent. Pursuant to 28 U.S.C. § 2242, the appropriate Respondent is the person having custody of Petitioner. Because Petitioner states he is an inmate of the Century Correctional Institution (CCI), which is a facility of the Florida Department of Corrections, the appropriate Respondent is either the Warden of CCI or the Secretary of the DOC. Because Petitioner does not name either the Warden or the Secretary as a Respondent, the court will direct the clerk to substitute Walter A. McNeil, the Secretary of the DOC, as the sole Respondent in this cause, as the court has already done in the caption of this order.

Accordingly, it is **ORDERED**:

1. The clerk shall modify the docket to reflect that Walter A. McNeil is the sole Respondent in this action.

2. Petitioner's application to proceed in forma pauperis (Doc. 2) is **DENIED**. Petitioner shall submit a payment of \$5.00 to the clerk of this court within **THIRTY (30) DAYS** from the date of docketing of this order. The check should be made payable to "Clerk, U. S. District Court."

3. Failure of Petitioner to either submit this amount or explain his inability to do so may result in a recommendation that this case be dismissed.

DONE AND ORDERED this 8th day of October 2008.

/s/ Elizabeth M. Timothy

ELIZABETH M. TIMOTHY

UNITED STATES MAGISTRATE JUDGE