

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

BILLY D. SCHIMMEL,
Petitioner,

vs.

CASE NO.: 3:09cv534/LC/MD

WALTER MCNEIL.
Respondent.

ORDER

This cause is before the court upon referral from the clerk. Petitioner commenced this action by filing a 53-page petition under 28 U.S.C. § 2254 (doc. 1) and a 69-page supporting memorandum (doc. 2). Petitioner failed to obtain this court's permission to file these exceedingly long documents. The Local Rules of this court provide: "No petition, complaint, or memorandum may exceed 25 pages absent leave of court upon a showing of good cause." N. D. Fla. Loc. R. 5.1(J)(3). The petition is further deficient because it fails to set forth any claims for relief on the petition form itself, and it further fails to identify the date of the judgment under attack. The court will therefore require petitioner to correct these deficiencies in an amended petition. Petitioner's memorandum will be stricken.

To amend his petition, petitioner should completely fill out a new § 2254 form, marking it "**Amended Petition.**" Petitioner should ensure that his amended petition complies with both the instructions on the petition form and this court's local rules. Petitioner should state his claims on the form itself as simply and concisely as possible, and facts that are extraneous to his claims should be excluded. Petitioner may add pages to the petition form, if necessary, or exceed the 6-page length of the form, but the total length of the amended petition may not exceed 25 pages. Petitioner must obtain leave of court and show good cause if the proposed amended petition exceeds that page limit. In

this regard, the court notes upon cursory review of the original petition that good cause for permitting an over-long petition is not present.

As an additional matter, petitioner has neither paid the \$5.00 filing fee nor applied for leave to proceed *in forma pauperis*. Petitioner's case cannot proceed until he either pays the filing fee or files a complete application for leave to proceed *in forma pauperis*. A complete application includes a motion with supporting affidavit, a prisoner consent form and a financial certificate with account attachments (a printout of the transactions in petitioner's inmate trust account for the six-month period immediately preceding the filing of his petition).

Accordingly, it is ORDERED:

1. The Clerk shall forward to the petitioner the form for use in § 2254 cases and a form application for leave to proceed *in forma pauperis*. This case number should be written on the forms.

2. Within **thirty (30) days** of the date of this order, petitioner shall file his amended petition, which shall be typed or clearly written and submitted on the court form as instructed above.

3. Within the same time period, petitioner shall either pay the \$5.00 filing fee in full, or submit a complete application for leave to proceed *in forma pauperis*.

4. Petitioner's failure to comply with this order as instructed may result in a recommendation of dismissal of this case.

5. Petitioner's memorandum (doc. 2) is STRICKEN.

DONE AND ORDERED this 8th day of December, 2009.

/s/ *Miles Davis*

MILES DAVIS
UNITED STATES MAGISTRATE JUDGE