

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

MARSHON EUGENE DEMONS,
Petitioner,

vs.

Case No. 3:10cv388/WS/MD

WALTER A. MCNEIL,
Respondent.

REPORT AND RECOMMENDATION

This cause is before the court upon referral from the clerk. Petitioner initiated this action on October 1, 2010 by filing of a petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. 1, p. 11 in ECF). The petition was not accompanied by the filing fee or a motion to proceed *in forma pauperis*, and was also short one service copy.

Accordingly, on October 20, 2010 the court issued an order requiring petitioner to provide an additional service copy of his petition and, in addition, to either pay the filing fee or submit a complete application for leave to proceed *in forma pauperis*. Petitioner was given twenty-eight (28) days in which to comply with the order, and warned that failure to do so would result in a recommendation that this case be dismissed. (Doc. 4). A copy of the order was mailed to petitioner at his address of record, Century Correctional Institution ("Century CI"). However, it was returned as undeliverable on November 2, 2010. Century CI had noted on the envelope that petitioner was released on October 2, 2010 ("EOS 10-2-10"), and had forwarded the mail to petitioner's stated address upon release: 13 Gibson St., Fort Walton Beach, Florida. See *a/so* www.dc.state.fl.us. Delivery had been attempted at that address, but the mail was returned to this court, marked "Return to Sender -

Refused - Unable to Forward.” (Doc. 6).

Because it appeared that the Department of Corrections’ forwarding address may have lacked a zip code, the court, in an abundance of caution, re-mailed a copy of the October 20, 2010 order to petitioner at the following address: 13 Gibson St., Fort Walton Beach, Florida 32548. (Doc. 7). On November 19, 2010, the mail was again returned as undeliverable marked, “Return to Sender - Not Deliverable As Addressed - Unable to Forward.” (Doc. 8).

It has been over thirty days since petitioner’s release, and petitioner has not provided the court with his current address.

Accordingly, it is respectfully RECOMMENDED:

1. That this case be DISMISSED WITHOUT PREJUDICE for plaintiff’s failure to keep the court informed of his current address.
2. That the clerk be directed to close the file.

At Pensacola, Florida, this 22nd day of November, 2010.

/s/ *Miles Davis*

MILES DAVIS
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

Any objections to these proposed findings and recommendations must be filed within fourteen days after being served a copy thereof. Any different deadline that may appear on the electronic docket is for the court’s internal use only, and does not control. A copy of objections shall be served upon all other parties. Failure to object may limit the scope of appellate review of factual findings. See 28 U.S.C. § 636; *United States v. Roberts*, 858 F.2d 698, 701 (11th Cir. 1988).