

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

WINDSOR E. COOKS,

Plaintiff,

v.

Case No. 4:13-cv-37-WS-GRJ

KENNETH TUCKER, et al.,

Defendants.

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ORDER

On February 1, 2013, the Court entered a Report and Recommendation recommending that this case be dismissed pursuant to 28 U.S.C. § 1915(g) because Plaintiff has four strikes. (Doc. 3.) Plaintiff did not pay the filing fee or move to proceed as a pauper when he filed the civil complaint. (Doc. 1.) In his objection to the Report and Recommendation, Plaintiff asserts that the \$350.00 filing fee was paid on Feb. 1, 2013 from the retirement account of Stuart Dale Bush. According to the FDOC website, Stuart Dale Bush is an inmate housed at Liberty C.I. with Plaintiff. No filing fee has been entered in the instant case. However, Plaintiff previously filed the same claims in another case in this District, Case No. 4:12-cv-296-WS-CAS, *Cooks .v Tucker*.

In that case, Plaintiff moved to voluntarily dismiss his case because he could not timely pay the filing fee. (Doc. 13, Case No. 4:12-cv-296-WS-CAS.) The Magistrate Judge granted the motion to dismiss and advised Plaintiff that “if this case is dismissed, and money is thereafter received from any source, it will be returned to the sender. Plaintiff may resubmit this case if and when Plaintiff pays the filing fee at the time of case initiation.” (Doc. 14, Case No. 4:12-cv-296-WS-CAS.) Accordingly, Plaintiff’s previous case was dismissed and administratively closed on November 30, 2012. On February 1, 2013, a \$350.00 filing fee payment was applied to Plaintiff’s closed case

contrary to the Magistrate's Judges' previous order that the filing fee (if received) should be returned to the sender.

Based on the Magistrate Judge's previous guidance to Plaintiff that any filing fee received in the dismissed case would be returned and Plaintiff's assertion that a filing fee in the instant case was paid on February 1, 2013, it appears that the \$350.00 was inadvertently applied to Case No. 4:12-cv-296-WS-CAS but should have been applied in the instant case, Case No. 4:13-cv-37-WS-GRJ.

Consequently, the Court's Report and Recommendation, recommending that the case be dismissed because the Plaintiff is a "three-striker," no longer applies because the Plaintiff has paid the filing fee in full.

Accordingly, upon due consideration, it is **ORDERED** that:

1. The Court's February 1, 2013 Report and Recommendation (Doc. 3) is withdrawn and the Clerk is directed to **VACATE** the Report and Recommendation.
2. The Clerk is directed to apply the filing fee currently reflected at Doc. 15 in Case No. 4:12-cv-296-WS-CAS to the instant case and update his fee status in Case No. 4:13-cv-37-WS-GRJ to paid.

DONE AND ORDERED this 20th day of February 2013.

s/ Gary R. Jones

GARY R. JONES
United States Magistrate Judge