

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

FREDERICK D. BUNTIN,
Petitioner,

vs.

Case No. 5:08cv374/MCR/MD

STATE OF FLORIDA,
Respondent.

REPORT AND RECOMMENDATION

This cause is before the court upon referral from the clerk. Petitioner initiated this action on December 15, 2008 by filing of a petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. 1, p. 1). The petition was not accompanied by the filing fee or an application for leave to proceed *in forma pauperis*. Accordingly, on January 14, 2009, the court issued an order directing petitioner to either pay the \$5.00 filing fee or submit a complete application to proceed *in forma pauperis* within thirty days. (Doc. 3). Petitioner was warned that failure to timely comply with the order may result in a recommendation of dismissal of this action for failure to comply with an order of the court.

Petitioner moved for reconsideration of the order, arguing that under Florida law this proceeding is a collateral criminal proceeding not subject to the filing fee requirement. (Doc. 9). The motion was denied on May 14, 2009, and petitioner was again directed that he must pay the filing fee or file an application to proceed *in forma pauperis*. (Doc. 10). Petitioner was given an extension of time to June 12, 2009 to submit the fee or application, and was warned that failure to do so may result in a recommendation of dismissal of this action for failure to comply with an order of the court. Petitioner did not comply with the order.

Accordingly, on June 26, 2009, the court issued an order directing petitioner to show cause within twenty days why this case should not be dismissed for failure to comply with an order of the court. That deadline has long passed, and petitioner has neither responded nor complied with the May 14, 2009 order.

Accordingly, it is respectfully RECOMMENDED:

1. That this case be DISMISSED WITHOUT PREJUDICE for plaintiff's failure to comply with an order of the court.
2. That the clerk be directed to close the file.

At Pensacola, Florida, this 19th day of August, 2009.

/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 ten 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).