

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

TYRONE CHAMBERS,

Petitioner,

v.

1:12-cv-1807-WSD

STATE OF GEORGIA,

Respondent.

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Susan S. Cole’s Final Report and Recommendation (“R&R”) [3] that this action be dismissed without prejudice for Tyrone Chambers’ (“Petitioner”) failure to comply with a lawful Order of the Court.

I. BACKGROUND

On May 23, 2012, Petitioner, a prisoner in the Calhoun State Prison in Morgan, Georgia, filed his *pro se* “Notification of Civil Suit” against the State of Georgia (“Respondent”) challenging his conviction as wrongful and seeking redress for improper actions taken by state officials in the conduct of his prosecution. (Pet’r’s Notification of Civil Suit at 1-2). On June 13, 2012,

construing his filing as a Section 2254 habeas petition,¹ and taking judicial notice that Petitioner already has a habeas corpus action pending in this Court, the Magistrate Judge ordered Petitioner “to either (1) file a motion voluntarily to dismiss this action because it is unnecessary in light of his other habeas action, currently pending, or (2) pay the \$5.00 filing fee for this action or execute and return a financial affidavit seeking leave to proceed *in forma pauperis*, and execute and return a habeas corpus petition.” (Order of June 13, 2012, at 1). Petitioner was also advised “that failure to pay the filing fee or submit the required financial affidavit within thirty (30) days of the entry date of this Order will result in dismissal of this action, as will a motion voluntarily to dismiss this action.” (Id. at 1-2).

On August 13, 2012, the Magistrate Judge issued her Final R&R recommending that Plaintiff’s claim be dismissed without prejudice for failure to follow a lawful order of this Court. (R&R at 1).

To date, Petitioner has not responded to the Magistrate Judge’s Order of June 13, 2012, has not filed objections to the Final R&R, and has not paid the

¹ The Court notes that Petitioner’s filing could also be construed as seeking relief pursuant to 28 U.S.C. § 1983. The manner in which the filing is construed is not determinative to the outcome of this action because in either case, Petitioner has failed to comply with the Court’s order to pay the required filing fee or submit the required financial affidavit in order to proceed with a civil action in this Court.

filing fee or submitted the required financial affidavit to proceed *in forma pauperis*.

II. DISCUSSION

A district judge “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). With respect to those findings and recommendations to which a party has not asserted objections, the Court must conduct a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984). Because Plaintiff did not object to the R&R, the Court reviews it for plain error.

The Court has reviewed the findings and recommendations in the R&R and concluded plain error was not committed in reaching them. Local Rule 41.3 provides that the Court may dismiss a civil case for want of prosecution if a plaintiff fails to obey a lawful order of the Court. L.R. 41.3 (A)(2), N.D. Ga.

Petitioner failed to comply with the Court’s June 13, 2012, Order after being warned that failure to file pay the filing fee or submit an application to proceed *in forma pauperis* may result in dismissal of this action for failure to obey a lawful order of the Court. (June 13, 2012, Order at 1-2). As a result, the Magistrate Judge found that Petitioner failed to obey a lawful order of the Court and

recommended, pursuant to Local Rule 41.3 A.(2), that this action be dismissed without prejudice.


III. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that the Court **ADOPTS** Magistrate Judge Susan S. Cole's Final Report and Recommendation [3].

IT IS FURTHER ORDERED that Petitioner's "Notification of Civil Suit" [1] is **DISMISSED WITHOUT PREJUDICE** pursuant to Local Rule 41.3 A.(2).

SO ORDERED this 6th day of September, 2012.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE