

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
PEORIA DIVISION**

CHARLES DONELSON, )  
)  
Petitioner, )  
)  
v. )  
)  
RICHARD HARRINGTON, )  
)  
Respondent. )

Case No. 13-cv-1523

**ORDER & OPINION**

This matter is before the Court on Petitioner’s Motion to Reconsider (Doc. 11), filed on February 27, 2014. On October 21, 2013, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. 1). The Court noted Petitioner had not paid his filing fee, so ordered him to pay or file a motion to proceed in forma pauperis. Petitioner then filed a motion to proceed in forma pauperis, but this motion was denied because he had ample funds in his institutional trust fund. (Doc. 5). The Court ordered Petitioner to pay the filing fee within twenty-eight days or face dismissal for failure to prosecute. (Doc. 5). Soon thereafter, Petitioner was transferred to a different institution, and the Court ordered him to provide a notice of change of address to the Court. (Text Order, Dec. 2, 2013). When the Court did not receive either the filing fee or a notice of change of address, the Court granted an extension sua sponte. (Text Order, Dec. 23, 2013). After that date, Petitioner was again transferred, resulting in another extension. (Text Order, Jan. 29, 2014). In each of these Orders, Petitioner was warned that failure to comply with the new deadline could result in dismissal of his Petition. On

February 18, 2014, the Court, having still not received a filing fee or notice of a change of address despite multiple extensions and warnings, dismissed the case with prejudice for failure to prosecute. (Doc. 9). Judgment was entered to that effect the same day. (Doc. 10).

In Petitioner's Motion to Reconsider, he states that he was unable to communicate with the Court or pay the filing fee because of his incarceration. He attests that because of his transfers, he did not receive some of the text orders. He also was not given pre-stamped envelopes to allow him to send a notice of change of address, and could not pay for them because his money was still in a trust fund at a previous institution. He also could not pay the filing fee despite his efforts to have it sent because the trust fund that had his money for some reason did not send it.

Petitioner's Motion is properly characterized as a motion to alter or amend a judgment pursuant to Federal Rule of Civil Procedure 59(e), and was timely filed within twenty-eight days after judgment was entered. Petitioner argues he is entitled to have his case reopened because it is not his fault that he did not comply with the Court's orders, but rather the prison system prevented him from communicating with the Court and paying his filing fee, in part because of his two institutional transfers. Though Petitioner has a responsibility to notify the Court of a change of address or problems with his filing fee, the Court recognizes the limitations Petitioner faces while incarcerated. As a result, the Court exercises its discretion to vacate the previous judgment, reopen the case, and give Petitioner another opportunity to file the five dollar filing fee.

Petitioner must pay the filing fee within twenty-eight days of the date of this Order, or he will again face dismissal of his case for failure to prosecute. The Rule 4 assessment of Petitioner's Petition will be postponed until the Court receives the fee. If Petitioner becomes aware of a delay in payment or is still unable to have money sent to the Court, he must notify the Court before the deadline to ask for an extension.

IT IS THEREFORE ORDERED that Petitioner's Motion to Reconsider (Doc. 11) is GRANTED. The Order dated February 18, 2014 (Doc. 9) and the accompanying Judgment (Doc. 10) are VACATED. Petitioner's case is REOPENED. Petitioner SHALL pay the five dollar filing fee within twenty-eight days of the date of this Order.

Entered this 5th day of March, 2014.

s/ Joe B. McDade  
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JOE BILLY McDADE  
United States Senior District Judge