

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**BRIAN SCOTT PERRY,  
Inmate No. 09620-062,**

**Petitioner,**

**vs.**

**JEFFREY S. WALTON,**

**Respondent.**

**No. 13-cv-00009-DRH**

**MEMORANDUM AND ORDER**

**HERNDON, Chief District Judge:**

Petitioner Brian Scott Perry, currently incarcerated at USP-Marion (“Marion”), brings this habeas corpus action pursuant to 28 U.S.C. § 2241 (Doc. 1). Petitioner states he is serving a 150 month sentence arising from his convictions for possession of a firearm after prior conviction of felony, possession with intent to distribute methamphetamine, and possession of a firearm in furtherance of a drug-trafficking crime. Petitioner alleges law enforcement officers who testified at his trial have since been charged with police corruption. He states this “new information” demonstrates his actual innocence. Without commenting on the merits of petitioner’s claims, the Court concludes that the petition survives preliminary review under Rule 4 and Rule 1(b) of the Rules Governing Section 2254 Cases in United States District Courts.<sup>1</sup>

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<sup>1</sup> Rule 1(b) of those Rules gives this Court the authority to apply the rules to other habeas corpus cases.

### **Filing Fee – Pending Motions**

Petitioner filed a motion for leave to proceed *in forma pauperis* (“IFP”) in this action on January 4, 2013 (Doc. 2), seeking waiver of the \$5.00 filing fee for this action. The Clerk has requested an inmate account statement from the trust fund officer at Marion (Doc. 4), and the undersigned Judge shall rule on petitioner’s motions after the receipt of this information.

A response shall be ordered so that this matter may proceed in a timely fashion. However, if petitioner is ultimately ordered to pay the filing fee, this action shall be subject to dismissal if he does not comply with a payment order. See FED. R. CIV. P. 41(b).

### **Disposition**

**IT IS HEREBY ORDERED** that respondent shall answer or otherwise plead within thirty days of the date this order is entered. This preliminary order to respond does not, of course, preclude the government from raising any objection or defense it may wish to present. Service upon the United States Attorney for the Southern District of Illinois, 750 Missouri Avenue, East St. Louis, Illinois, shall constitute sufficient service.

**IT IS FURTHER ORDERED** that pursuant to Local Rule 72.1(a)(2), this cause is referred to a United States Magistrate Judge for further pre-trial proceedings.

**IT IS FURTHER ORDERED** that this entire matter be **REFERRED** to a United States Magistrate Judge for disposition, as contemplated by Local Rule

72.2(b)(2) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral.*

Petitioner is **ADVISED** of his continuing obligation to keep the Clerk (and each opposing party) informed of any change in his whereabouts during the pendency of this action. This notification shall be done in writing and not later than seven (7) days after a transfer or other change in address occurs. Failure to provide such notice may result in dismissal of this action. See FED. R. CIV. P. 41(b).

**IT IS SO ORDERED.**

Signed this 10<sup>th</sup> day of January, 2013.

*David R. Herndon*



David R.  
Herndon

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**Chief Judge  
United States District Court**