

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

FREDERICK BANKS, 05711-068,)

Plaintiff,)

vs.)

CIVIL NO. 17-cv-0768-JPG

SOO SONG, et al)

Defendants.)

MEMORANDUM AND ORDER

GILBERT, District Judge:

On September 19, 2017, Petitioner was ordered to pay the filing fee of \$400.00 for this action no later than October 19, 2017 (Doc. 6). Plaintiff was clearly warned in that Order that failure to pay the filing fee of \$400.00 would result in dismissal of this case. The date to pay the filing fee has passed, and Plaintiff has failed to do so. As a result, this action is **DISMISSED** without prejudice, for failure to comply with an Order of this Court. **FED. R. CIV. P. 41(b)**. *See generally Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994). This dismissal shall **NOT** count as one of Plaintiff's three allotted "strikes" under 28 U.S.C. § 1915(g). Plaintiff's obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee of \$400 remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). Accordingly, the agency having custody of the plaintiff is directed to remit the \$400.00 filing fee from his prison trust fund account if such funds are available. If he does not have \$400.00 in his account, the agency must send an initial payment of 20% of the current balance or the average balance during

the past six months, whichever amount is higher. Thereafter, the agency shall begin forwarding monthly payments of 20% of the preceding month's income credited to Plaintiff's trust fund account (including all deposits to the inmate account from any source) until the statutory fee of \$400.00 is paid in its entirety. The agency having custody of Plaintiff shall forward payments from Plaintiff's account to the Clerk of Court each time the Plaintiff's account exceeds \$10.00 until the \$400.00 filing fee is paid. Payments shall be mailed to: Clerk of the Court, United States District Court for the Southern District of Illinois, P.O. Box 249, East St. Louis, Illinois 62202. The Clerk is **DIRECTED** to mail a copy of this Order to the Trust Fund Officer at the Northeast Ohio Correctional Center *upon entry of this Order*.

The Clerk's Office is **DIRECTED** to close this case.

IT IS SO ORDERED.

DATED: November 7, 2017

s/J. Phil Gilbert
United States District Judge