

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KAREN WILCOX

CIVIL ACTION

VERSUS

NO: 12-2471

WARDEN LOUISIANA CORRECTIONAL
INSTITUTION FOR WOMEN, ET AL.

SECTION: "H"(3)

ORDER AND REASONS

Before the Court is a Motion for Review of the Magistrate Judge's Order Denying Plaintiff's Application to Proceed *in Forma Pauperis*. (R. Doc. 10.) For the following reasons, the Motion is DENIED.

BACKGROUND

Plaintiff is an inmate incarcerated at the Louisiana Correctional Institute for Women. Proceeding *pro se*, Plaintiff filed a Petition for Writ of Habeas Corpus (R. Doc. 1) and moved to proceed *in forma pauperis* under 28 U.S.C. § 1915 (R. Doc. 2).

Determination of Plaintiff's pauper status was referred automatically to the magistrate judge assigned to this case pursuant to Local Rule 72.1(B)(1). The Magistrate Judge denied Plaintiff's application to proceed *in forma pauperis* on October 12, 2012. (R. Doc. 7.) Plaintiff subsequently filed a Motion to Reconsider on November 9, 2012 (R. Doc. 8), which the Magistrate denied on November 13, 2012 (R. Doc. 9). Plaintiff filed the instant Motion on December 14, 2012 (R. Doc. 10) seeking review in this Court of the Magistrate Judge's Order denying her Motion to Reconsider.

LAW AND ANALYSIS

A magistrate judge's ruling on a non-dispositive pre-trial matter—such as a motion to proceed *in forma pauperis*—may be appealed to the district court under Rule 72(a) and 28 U.S.C. § 636(b)(1)(A). Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A); *see also Arvie v. Tanner*, No. 12–1638., 2012 WL 3597127, at *1 (E.D. La. Aug. 21, 2012). Rule 72(a), which implements 28 U.S.C. 636(b)(1)(A), requires that a party object to a magistrate's order within fourteen days after service of same. *See* 12 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure* § 3069 at 346 (2d ed. 1997); Fed. R. Civ. P. 72(a). An objection that is not timely filed is waived. Fed. R. Civ. P. 72(a).

The Court notes that Plaintiff was served electronically through CM/ECF. Even if the Court were to extend the fourteen-day deadline by three days under Rule 6(d), as some courts have

done,¹ Plaintiff's objection would still be untimely. Accordingly, that objection is waived.

This Court is mindful, however, that "[t]he filings of a federal habeas petitioner who is proceeding *pro se* are entitled to the benefit of liberal construction." *Hernandez v. Thaler*, 630 F.3d 420, 426 (5th Cir. 2011). Thus, assuming *arguendo* that Plaintiff's objection was timely filed, this Court will "modify or set aside any part" of the Magistrate's Order denying Plaintiff leave to proceed *in forma pauperis* "that is clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); see also *Poche v. Butler*, No. 07-3506., 2007 WL 2695350, at *1 (E.D. La. Sept. 11, 2007). Under this highly deferential standard, the magistrate judge's decision "must be affirmed unless 'on the entire evidence [the Court] is left with a definite and firm conviction that a mistake has been committed.'" *Arvie*, 2012 WL 3597127 at *1 (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948) (alterations in original)).

Plaintiff's pauper application shows that she has a balance of \$13.30 in her account and that her average monthly deposits for the six months preceding her application was \$9.71. (R. Doc. 2.) Thus, as the Magistrate Judge noted, Plaintiff is able to pay the \$5.00 filing fee. Plaintiff has not provided this Court with any evidence to the contrary.

Given the foregoing, the Court finds that the Magistrate Judge's ruling was not "clearly erroneous or contrary to law." Accordingly, the instant Motion is denied.

¹ See, e.g., *Proa v. NRT Mid Atl.*, 633 F. Supp. 3d 209, 212 (D. Md. 2009); *BSN Med., Inc. v. Parker Med. Assocs., LLC*, No. 3:09CV15., 2011 WL 134188, at *2 (W.D. N.C. Apr. 8, 2011).

CONCLUSION

For the reasons previously stated, the Motion for Review of the Magistrate Judge's Order Denying Plaintiff's Application to Proceed *in Forma Pauperis* is denied.

New Orleans, Louisiana, on this 4th day of January, 2013.

A handwritten signature in black ink, appearing to read "Jané Triche Milazzo", written over a horizontal line.

JANÉ TRICHE MILAZZO
UNITED STATES DISTRICT JUDGE

