

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION**

ANDRE R. THOMAS,

Petitioner,

v.

Case Number 1:18-cv-11325  
Honorable Thomas L. Ludington  
United States District Judge

TONY TRIERWEILER,

Respondent,

**OPINION AND ORDER SUMMARILY DISMISSING THE PETITION FOR WRIT OF  
HABEAS CORPUS AND DENYING A CERTIFICATE OF APPEALABILITY**

Petitioner Andre R. Thomas is presently confined at the Bellamy Creek Correctional Facility in Ionia, Michigan. On April 27, 2018, Thomas filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. On May 2, 2018, Magistrate Judge R. Steven Whalen signed an “Order to Correct Deficiency,” in which Petitioner was ordered to submit a \$5.00 fee for filing a habeas corpus petition or an application to proceed *in forma pauperis* within twenty one days of the order. ECF No. 2. To date, the petitioner has failed to submit either the filing fee or an application to proceed *in forma pauperis*. For the reasons stated below, the petition for writ of habeas corpus is dismissed without prejudice because of the petitioner’s failure to comply with an order of the Court.<sup>1</sup>

**I.**

If a prisoner who seeks habeas corpus relief does not comply with a district court’s directions regarding the prisoner’s failure to pay the full filing fee and the failure to provide

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<sup>1</sup> Magistrate Judge Whalen separately signed an order for the petitioner to provide additional copies of the petition for writ of habeas corpus for service upon the respondent. The petitioner has since provided service copies of the petition, but did not submit the filing fee or the application to proceed *in forma pauperis*.

required documentation for *in forma pauperis* status, the district court must presume that the prisoner is not a pauper, assess the full filing fee, and dismiss the case for want of prosecution. *See Gravitt v. Tyszkiewicz*, 14 Fed. App'x. 348, 349 (6th Cir. 2001) (unpublished) (citing *McGore v. Wrigglesworth*, 114 F. 3d 601, 605 (6th Cir. 1997)). The deficiency order stated that the petitioner was required to submit either the \$ 5.00 filing fee or an application to proceed *in forma pauperis*. The deficiency order also expressly warned the petitioner that failure to comply with the order could result in the dismissal of his action. Because Petitioner failed to comply with the deficiency order, his petition is subject to dismissal for want of prosecution. *Gravitt*, 14 Fed. App'x. at 349.

The petition will be summarily dismissed without prejudice. Petitioner will also be denied a certificate of appealability. In order to obtain a certificate of appealability, a prisoner must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). When a district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claims, a certificate of appealability should issue, and an appeal of the district court's order may be taken, if the petitioner shows that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petition should be allowed to proceed further. In such a circumstance, no appeal would be warranted. *Id. See also Soeken v. Estep*, 270 F. App'x. 734, 735-36 (10th Cir. 2008). Accordingly, Petitioner will be denied a certificate of appealability.

## II.

Accordingly, it is **ORDERED** that the petition for a writ of habeas corpus, ECF No. 1, is **DISMISSED** without prejudice.

It is further **ORDERED** that a certificate of appealability is **DENIED**.

Nothing in this order precludes the petitioner from submitting a new habeas petition with payment of the filing fee or the *in forma pauperis* application.

Dated: June 20, 2018

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 20, 2018.

s/Kelly Winslow  
KELLY WINSLOW, Case Manager