

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JERRY W. PHILLIPS,

Petitioner,

vs.

No. CIV. 18-0998 JB\SCY

RICHARD MARTINEZ,

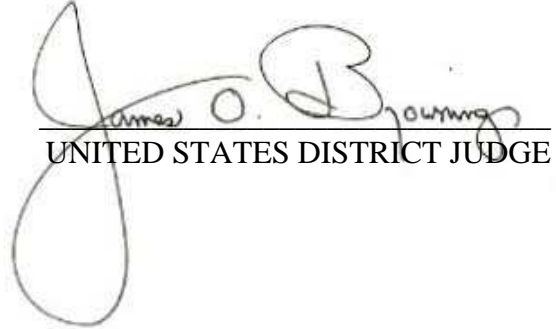
Respondent.

**MEMORANDUM OPINION AND ORDER DENYING MOTION TO PROCEED
IN FORMA PAUPERIS**

THIS MATTER comes before the Court on the Petitioner's Motion to Proceed In Forma Pauperis, filed October 24, 2018 (Doc. 2)("Motion"). Petitioner Jerry W. Phillips seeks to prosecute his 28 U.S.C. § 2254 habeas action without prepaying the \$5.00 filing fee. Pursuant to the in forma pauperis statute, the Court may grant such relief only where an inmate's "affidavit [and] . . . statement of . . . assets [demonstrates] that the [inmate] is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1). Phillips does not qualify under that test. He receives between \$35.00 and \$54.00 per month in income, and he has a balance of \$30.46 in his inmate account. See Motion at 3. The Court will therefore deny the Motion, and Phillips must pay the \$5.00 filing fee within thirty days of entry of this Memorandum Opinion and Order Denying Motion to Proceed In Forma Pauperis. Failure to timely comply may result in the dismissal of this action without further notice.

IT IS ORDERED that: (i) the Motion to Proceed In Forma Pauperis, filed October 24, 2018 (Doc. 2), is denied; (ii) the Petitioner Jerry W. Phillips must submit the \$5.00 filing fee within thirty days from entry of this Memorandum Opinion and Order Denying Motion to Proceed In Forma Pauperis; and (iii) the Clerk shall provide Phillips with two copies of this Memorandum

Opinion and Order Denying Motion to Proceed In Forma Pauperis, and Phillips shall make the necessary arrangements to attach one copy of this Memorandum Opinion and Order Denying Motion to Proceed In Forma Pauperis to his check.



James O. Downing
UNITED STATES DISTRICT JUDGE

Parties:

Jerry W. Phillips
Otero County Prison Facility
Chaparral, New Mexico

Plaintiff pro se