

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

JASON EARWOOD,

Petitioner,

vs.

No. CIV 18-1022 JB\JFR

RICHARD MARTINEZ,

Respondent.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER comes before the Court, under rule 41(b) of the Federal Rules of Civil Procedure, on the Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus, filed November 2, 2018 (Doc. 1)("Petition"). The Court will dismiss the Petition without prejudice for failure to comply with a Court order and failure to prosecute.

The record reflects that certain mailings to Petitioner Jason Earwood were returned as undeliverable. See Mail Returned as Undeliverable re Notice of Judge Reassignment, filed May 10, 2019 (Doc. 7); Mail Returned as Undeliverable re Order Referring Case to Magistrate Judge, filed May 10, 2019 (Doc. 8); Mail Returned as Undeliverable re Order to Show Cause, filed May 24, 2019 (Doc. 11). It appears that Earwood has been transferred or released from custody without advising the Court of his new address, as D.N.M. LR-Civ. 83.6 requires, thus severing contact with the Court. The Honorable John F. Robbenhaar, United States Magistrate Judge for the United States District Court for the District of New Mexico, issued an Order to Show Cause on May 14, 2019, directing Earwood to notify the Court of a new address, or otherwise to show cause why the Court should not dismiss the case within thirty days of entry of the Order. See Order to Show Cause at 2, filed May 14, 2019 (Doc. 10). More than thirty days have elapsed since entry of the

Order to Show Cause, and Earwood has not provided the Court with a new address, responded to Magistrate Judge Robbenharr's Order to Show Cause, or otherwise shown cause why the Court should not dismiss the case.

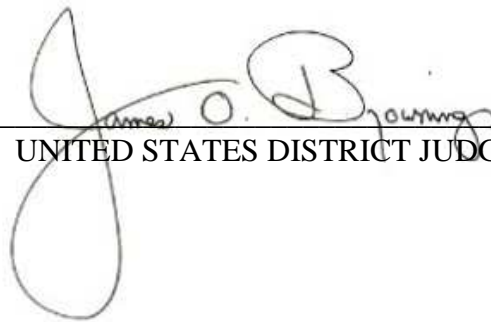
Pro se litigants are required to follow the Federal Rules of Civil Procedure and simple, nonburdensome local rules. See Bradenburg v. Beaman, 632 F.2d 120, 122 (10th Cir. 1980). The local rules require litigants, including prisoners, to keep the Court apprised of their proper mailing address and to maintain contact with the Court. See D.N.M. LR-Civ. 83.6. Earwood has not complied with D.N.M. LR-Civ. 83.6 and with the Magistrate Judge Robbenharr's May 14, 2019, Order to Show Cause.

Earwood has not complied with the Magistrate Judge Robbenharr's Order to Show Cause and not prosecuted this action by not keeping the Court apprised of his current address. The Court may dismiss an action under rule 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders. See Olsen v. Mapes, 333 F.3d 1199, 1204, n.3 (10th Cir. 2003). The Court, therefore, will dismiss this civil proceeding pursuant to rule 41(b) for failure to comply with Magistrate Judge Robbenharr's Order to Show Cause and failure to prosecute this proceeding.

Pending before the Court is Earwood's Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. See Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, filed November 2, 2018 (Doc. 2)("Motion"). With his Motion, Earwood submitted an inmate account statement for the five months preceding the filing of his Petition. See Motion at 3-4. The account statement indicates that Earwood had average monthly deposits to the account in the amount of \$63.61 and an average monthly balance equal to \$40.57. Both of these amounts significantly exceed the \$5 filing fee for this proceeding and reflect a clear

ability on the part of Petitioner to pay the \$5 filing fee. The Court, therefore, will deny the Motion under the provisions of 28 U.S.C. § 1915(a)(1) (stating that, to proceed in forma pauperis, a prisoner must show that he “is unable to pay such fees or give security therefore”).

IT IS ORDERED that: (i) the Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, filed November 2, 2018 (Doc. 2), is denied; and (ii) the Petitioner’s Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus, filed November 2, 2018 (Doc. 1), and all claims in this case are dismissed without prejudice.



UNITED STATES DISTRICT JUDGE

Parties:

Jason Earwood
Otero County Prison Facility Chaparral, New Mexico

Petitioner pro se