

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CLERK'S OFFICE
DISTRICT COURT E.D.N.Y.
NOV 25 2013
CLYNN OFFICE
lead
11/25/13
wrt

In re: JERRELL MILLER,

Applicant.

MEMORANDUM & ORDER

13-cv-4919 (ENV)

VITALIANO, D.J.,

On August 23, 2013, Jerrell Miller, currently incarcerated at Upstate Correctional Facility and proceeding *pro se*, filed the instant action seeking to challenge the Constitutionality of New York Penal Law §70.45. Miller did not pay the filing fee, nor did he file an application to proceed *in forma pauperis* and a Prisoner Authorization Form. On September 27, 2013, the Clerk's Office mailed Miller a letter at the address listed on his complaint directing him to either submit a completed application to proceed *in forma pauperis* and a Prisoner Authorization Form or to pay the \$350 filing fee to the Clerk of Court within 14 days. More than 14 days have passed and Miller has failed to respond.

Conclusion

In line with the foregoing, plaintiff's complaint is dismissed without prejudice.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to close this case for administrative purposes.

SO ORDERED.

**Dated: Brooklyn, New York
November 21, 2013**

/S/ Judge Eric N. Vitaliano

ERIC N. VITALIANO
United States District Judge