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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

Alfred Milton Rivera,)
)
)
Petitioner,)
)
)
v.) 1:06CV158
)
)
Warden T. O'Brien,)
)
)
Respondent.)

**ORDER AND RECOMMENDATION
OF MAGISTRATE JUDGE ELIASON**

Petitioner, a prisoner, has submitted a petition under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody. The Clerk of Court received the submission on February 15, 2006, which petitioner had dated as of February 10, 2006. For the following reasons, the petition cannot be further processed.

1. Filing fee was not received or affidavit to proceed in forma pauperis was not submitted or signed by the petitioner. [Attached instructions and Rule 3(a), Rules Governing § 2254 Cases.]
2. Petitioner did not complete the forms: A petitioner is required to specify his grounds for relief and set out the facts which the petitioner claims support each ground. See Rules Governing Section 2254 Cases 2(c). The Court will not search for facts in briefs or other documents. The facts must be set out in paragraph 12 of the Section 2254 forms. Id. Petitioner substituted a brief for the motion form pages where his claims and the supporting facts should have been set out. Petitioner should complete the forms stating his claims and briefly stating the supporting facts for each claim and then submit the brief as a separate document.
3. Petitioner is challenging a 1992 sentence and from the papers he submitted it appears that the sentence has been completely served at this time. Upon re-filing, petitioner must state any and all constraints on his liberty this conviction is now causing.

Because of these pleading failures, this particular petition should be filed and then dismissed, without prejudice to petitioner filing a new petition on the proper habeas corpus forms with the \$5.00 filing fee, or a completed application to proceed in forma pauperis, and otherwise correcting the defects noted. The Court has no authority to toll the statute of limitation, therefore it continues to run, and petitioner must act quickly if he wishes to pursue this petition. See Spencer v. Sutton, 239 F.3d 626 (4th Cir. 2001). To further aid petitioner, the Clerk is instructed to send petitioner a new application to proceed in forma pauperis, and new § 2254 forms.

In forma pauperis status will be granted for the sole purpose of entering this order and recommendation.

IT IS THEREFORE ORDERED that in forma pauperis status is granted for the sole purpose of entering this order and recommendation. The Clerk is instructed to send petitioner Section 2254 forms, instructions, and a current application to proceed in forma pauperis.

IT IS RECOMMENDED that this action be filed, but then dismissed sua sponte without prejudice to petitioner filing a new petition which corrects the defects of the current petition.



United States Magistrate Judge

February 21, 2006