

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

AIJALON W. McLITTLE, II)	
)	
Plaintiff,)	
vs.)	NO. CIV-06-116-T
)	
R. S. SWAIN, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff, a state prisoner appearing *pro se*, alleges in this 42 U.S.C. § 1983 action that his constitutional rights were violated by defendants. Pursuant to 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Doyle W. Argo for initial proceedings.

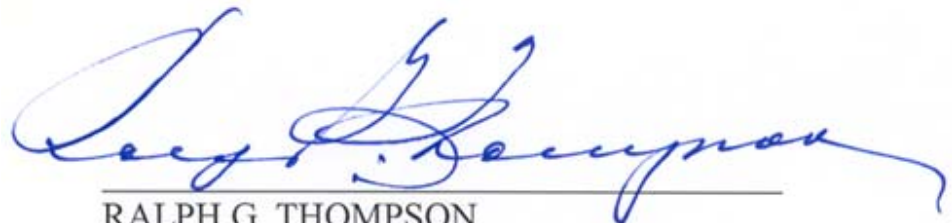
On March 8, 2006 the magistrate judge filed a Report and Recommendation [Doc. No.7] in which he recommended that the action be dismissed without prejudice to refile because plaintiff failed to pay the filing fee of \$34.09 by the deadline of February 27, 2006. Following the filing of the Report and Recommendation, the undersigned received from plaintiff a change of address [Doc. No.8] and an application to extend the time in which to pay the filing fee [Doc. No. 9]. Plaintiff states that he was transferred from FCI Sheridan in Oregon, the facility in which he was incarcerated at the time this action was filed, to FCI Waseca in Minnesota, and that he did not arrive at the new facility until March 14, 2006. The change of address and application for extension of time state that they were mailed to this court on March 16.

Plaintiff fails to explain why he did not make arrangements to pay the initial filing fee by the February 27 deadline. He states that he was “packed up” for transit and moved on a plane to his new location on February 16, 2006 and was “in transit” until March 14, 2006, a period of approximately 30 days. He does not explain why being transferred from Oregon to Minnesota by plane required

30 days. Neither does he explain why he did not make arrangements to comply with the February 7, 2006 order of Judge Argo prior to his departure from Oregon.

While a transfer of location may sometimes warrant an extension of time to comply with court orders, the undersigned finds that plaintiff has not justified the delay in the circumstances described. The court concludes that plaintiff has not shown good cause for his failure to comply with the order directing payment of the initial filing fee of \$34.09. Dismissal of this action without prejudice to the filing of a new action is warranted. Accordingly, the Report and Recommendation [Doc. No. 7] is adopted, and this action is dismissed without prejudice to plaintiff's filing of a new action asserting his § 1983 claims. Plaintiff's application for an extension of time [Doc. No. 8] is DENIED.

IT IS SO ORDERED this 18th of May, 2006.



RALPH G. THOMPSON
UNITED STATES DISTRICT JUDGE