

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

JERRY L. THOMAS,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-10-110-W
)	
DAVID C. MILLER,¹)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing *pro se*, has filed a 28 U.S.C. § 2241 petition for writ of habeas corpus together with a motion for leave to proceed *in forma pauperis* and supporting affidavit. Pursuant to an order entered by United States District Judge Lee R. West, this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B) and (C). Having reviewed said motion, the undersigned finds that Petitioner has sufficient funds to prepay the filing fee of \$5. Specifically, the record reflects that Petitioner has \$23.00 in his inmate savings account which is available for the payment of filing fees. Because Petitioner does not qualify for authorization to proceed without prepayment of the filing fee, it is recommended that Petitioner’s motion [Doc. No. 2] be denied and that he be ordered to prepay the full \$5 filing fee for this action to proceed. 28 U.S.C. § 1915(a)(1). It is further recommended that this

¹The Petitioner has also listed Drew Edmondson, the Oklahoma Attorney General as a Respondent. However, the state officer having custody of the applicant is the properly named respondent. See Rule 2, Rules Governing Section 2254 Cases in the United States District Courts. Therefore, Attorney General Edmondson is dismissed as a Respondent.

action be dismissed without prejudice to refiling unless Petitioner pays the \$5 filing fee in full to the Clerk of the Court within twenty (20) days of any order adopting this Report and Recommendation.

Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by the 25th day of February, 2010, in accordance with 28 U.S.C. § 636 and Fed.R.Civ.P 72. Petitioner is further advised that failure to timely object to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F. 2d 656 (10th Cir. 1991). The Clerk is hereby directed not to forward a copy of the petition to the appropriate state agency until further order of the Court.

ENTERED this 5th day of February, 2010.



DOYLE W. ARGO
UNITED STATES MAGISTRATE JUDGE