

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

LAMOUNT CORTEZ DORITY,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-15-30-D
)	
JANET DOWLING, Warden, ¹)	
)	
Respondent.)	

ORDER

This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Shon T. Erwin on January 13, 2015. Judge Erwin recommends the denial of Petitioner's motion for leave to proceed *in forma pauperis* (IFP) because he has sufficient financial resources to pay the \$5.00 filing fee for his Petition. Judge Erwin further recommends that the action be dismissed without prejudice to refiling if the required payment is not made within 20 days of an order adopting the Report.

Petitioner has filed a timely written objection, but he does not challenge Judge Erwin's finding that he has the financial ability to pay the \$5.00 fee. Thus, further review of this issue is waived. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 East 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996).² Petitioner instead requests additional time to make the required payment due to delay by the Oklahoma

¹ The Court concurs in the magistrate judge's substitution of the warden at Petitioner's place of confinement as the proper respondent.

² In any event, Petitioner has submitted with his objection a recent statement of his institutional account, which confirms that he has sufficient funds on hand to pay the \$5.00 fee.

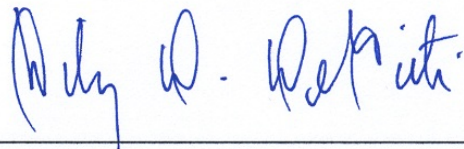
Department of Corrections (DOC) in transmitting the funds, despite his timely request for a disbursement from his institutional account. Petitioner states that if his case is dismissed for nonpayment and must be refiled, it will be time-barred by operation of 28 U.S.C. § 2244(d).

Petitioner's concern about the timeliness of his payment is premature. The 20-day time period to pay the fee, as recommended by Judge Erwin, will begin to run upon the entry of an order adopting the Report and Recommendation. Therefore, Petitioner will have 20 days from the date of this Order to complete the payment process. If payment is not made within that 20-day period, Petitioner may file a motion at that time requesting additional time to pay. In that event, Petitioner should show cause for failing to make the payment in a timely manner, including that he has taken the necessary steps to obtain a disbursement and transmittal of funds by DOC.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 6] is ADOPTED, and Petitioner's IFP motion [Doc. No. 3] is DENIED. Petitioner shall pay the full \$5.00 filing fee for this action within 20 days from the date of this Order.

IT IS FURTHER ORDERED that this matter is re-referred to Judge Erwin for further proceedings consistent with the initial case referral.

IT IS SO ORDERED this 4th day of February, 2015.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE