

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

NYRAN DALE THOMPSON, :
 :
 Plaintiff :
 :
 v. :
 :
DEPUTY WARDEN CARVER, et al., :
 :
 Defendants :

CIVIL NO. 3:CV-16-1529
(Judge Caputo)

FILED
SCRANTON

MAY - 5 2017

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I. Introduction

Mr. Thompson initiated this action while incarcerated. Prior to his release, he was granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 and directed to pay the initial partial filing fee of \$6.65. To date Mr. Thompson has failed to pay the requisite initial partial filing fee or challenge the calculation of his initial partial filing fee. For the reasons that follow, Mr. Thompson’s case will be dismissed without prejudice due to his failure to pay the partial initial filing fee.

II. Procedural History and Background

Mr. Thompson initiated this action in the United States District Court for the Eastern District of Pennsylvania while incarcerated. (ECF No. 1, Compl.) On July 17, 2014, Mr. Thompson was released from custody. (ECF No. 7.) On July 18, 2014, the Eastern District Court closed the matter after Mr. Thompson failed to pay either the filing fee or file a motion to proceed *in forma pauperis*. (ECF No. 2.) In November 2015 Mr. Thompson sought to

reopen his case. (*Id.*) Prior to granting his request, the Eastern District Court directed Mr. Thompson to file an *in forma pauperis* application. (ECF No. 9.) Mr. Thompson submitted the necessary form in addition to copies of his prisoner account statement six months prior to the initiation of his civil action. (ECF No. 8, Ex. D, pp. 17 - 26.) On July 21, 2016, the Eastern District Court granted his *in forma pauperis* request pursuant to 28 U.S.C § 1915 and directed he pay, within thirty days, an initial partial filing fee of \$6.65. (ECF No. 12.) This sum was based on his prison account statement on record. Via the same order, the Eastern District Court transferred the case to this Court as his claim stems from events that transpired at the Monroe County Correctional Facility which is located in this district. (*Id.*)

To date Mr. Thompson has not complied with the Eastern District's July 21, 2016, Order. Mr. Thompson has not tendered the initial filing fee to either the Eastern District or the Middle District Clerk of Court.

III. Discussion

Under the Prison Litigation Reform Act, "once [Plaintiff's] fee obligation under the PLRA accrued, his subsequent release from prison did not relieve him of his obligation under the PLRA to pay the initial filing fee of [\$6.65]". See *Drayer v. Att'y General*, 81 F. App'x 429 (3d Cir. 2003). The Eastern District directed Mr. Thompson to pay the amount, according the PLRA formula, he was capable of paying at the time when he filed the action while incarcerated, \$6.65. He was given thirty days, or until August 21, 2016, to make the requisite payment. (ECF No. 12.) While Mr. Thompson has filed other documents with the Court he

has not complied with the Eastern District's order nor offered an explanation for his failure to do so. Likewise, he has not demonstrated that he did not have the money in his prison account to pay the initial partial fee at the time he filed his Complaint or that the Eastern District's calculation of his initial partial filing fee was inaccurate. As Mr. Thompson has failed to pay, as required by 28 U.S.C. § 1915(b), the \$6.65 initial partial filing fee, his Complaint will be dismissed without prejudice. See *Drayer*, 81 F. App'x at 431 (district court properly dismissed former inmate's Complaint without prejudice for failure to pay the initial partial filing fee on case initiated while incarcerated); see also *Freeman v. Colo. Dep't of Corrections*, 396 F. App'x 543 (10th Cir. 2010) (affirming dismissal without prejudice of § 1983 action for failure to pay initial partial filing fee).

An appropriate Order follows.



A. RICHARD CAPUTO
United States District Judge

Dated: May 5, 2017