

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

ANTHONY HASKINS,	:	
	:	
Petitioner	:	CIVIL ACTION NO. 4:10-0559
	:	
v.	:	(JONES, D.J.)
	:	(MANNION, M.J.)
DOMINIK L. DeROSE; and PA	:	
ATTORNEY GENERAL,	:	
	:	
Respondents	:	
	:	

REPORT AND RECOMMENDATION¹

On March 12, 2010, the plaintiff, a former inmate at the Dauphin County Prison, Harrisburg, Pennsylvania, filed this habeas petition pursuant to [28 U.S.C. §2254](#). (Doc. No. [1](#)). On the same day, the petitioner filed a motion to proceed *in forma pauperis*, (Doc. No. [2](#)). On March 16, 2010 this court issued an order to show cause directing the respondents to respond to the petition for writ of habeas corpus. (Doc. No. [4](#)).

On June 15, 2010 this court issued an order directing the respondents to serve the petitioner with a copy of their motion to dismiss at the new address listed for the petitioner. (Doc. No. [12](#)). In that order the court directed

¹For the convenience of the reader of this document in electronic format, hyperlinks to the court's record and to authority cited have been inserted. No endorsement of any provider of electronic resources is intended by the court's practice of using hyperlinks.

the petitioner to file a response on or before July 6, 2010. This date has long since passed without any filings having been received from the petitioner.

The petitioner's failure to respond in any way constitutes a failure to prosecute this action and therefore this action is subject to dismissal pursuant to [Fed.R.Civ.P. 41\(b\)](#), which states in pertinent part:

"If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."

The Third Circuit has long held that Rule 41(b) does not prohibit the *sua sponte* dismissal of actions against a defendant.

As was said in *Link v. Wabash R.R.*, where the plaintiff argued that [F.R.C.P. 41\(b\)](#) by negative implication prohibits involuntary dismissal except on motion by the defendant, no restriction on the district court's power should be implied: "The authority of a court to dismiss *sua sponte* for lack of prosecution has generally been considered an 'inherent power,' governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases."

[Kenney v. Cal. Tanker Co., 381 F.2d 775, 777 \(3d Cir. 1967\)](#) (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962)).

In the instant action, the court can not properly control its docket, move this action forward and properly protect the rights of all parties if the plaintiff fails to comply with orders issued by this court. Moreover, such conduct should not be condoned in light of the large prisoner dockets presently

pending before the federal courts, all of which require prompt and thorough review.

Finally, since the petitioner has not responded in any way to the courts last order and has made no contact with the court whatsoever, justifies dismissal of this action.

On the basis of the foregoing, **IT IS RECOMMENDED THAT:**

the instant action be **DISMISSED** pursuant to [Fed.R.Civ.P. 41\(b\)](#).

s/ Malachy E. Mannion

MALACHY E. MANNION
United States Magistrate Judge

Date: September 14, 2010

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NOTICE

Any party may obtain a review of the magistrate judge's above proposed determination pursuant to Rule **72.3**, M.D.PA, which provides:

72.3 REVIEW OF REPORTS AND RECOMMENDATIONS OF MAGISTRATE JUDGES ADDRESSING CASE DISPOSITIVE MOTIONS

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636(b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within **fourteen (14) days** after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need not conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.