

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

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2014 JUL 29 P 4: 49

Nathaniel Gaither, # 84703-020,

) C/A No. 5:14-1812-RMG-

Petitioner,

vs.

ORDER

A. Mansukhani, Warden,

Respondent.

This case is before the Court because of Petitioner’s failure to comply with the magistrate judge’s Order of May 29, 2014. ECF No. 6.

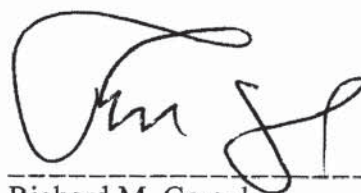
A review of the record indicates that the magistrate judge ordered Petitioner to submit a filing fee or a motion for leave to proceed *in forma pauperis* needed to render this case into proper form within twenty-one days, and specifically informed Petitioner that if he failed to do so, this case would be dismissed *without prejudice*. The Court mailed the Order to the prison address provided when he filed this case and also to the new prison address that he submitted to the Court after the Order was issued. The Court has not received any response from Petitioner and the time for his compliance has passed.

The mail in which the Order was sent to Petitioner at the address provided when the case was filed and at the updated address provided at the end of May 2014 has not been returned to the court, thus it is presumed that Petitioner received the Order, but has neglected to comply with it within the time permitted under the Order.

Petitioner's lack of response to the Order indicates an intent to not continue prosecuting this case and subjects the case to dismissal. *See* Fed. R. Civ. P. 41(b) (district courts may dismiss an action if a Petitioner fails to comply with "any order of the court."); *see also Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989) (dismissal with prejudice appropriate where warning given); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982)(court may dismiss *sua sponte*).

Accordingly, this case is dismissed *without prejudice*. The Clerk of Court shall close the file.¹

IT IS SO ORDERED.



Richard M. Gergel
United States District Judge

July 21, 2014
Charleston, South Carolina

¹ Under General Order, Misc. No. 3:07-5014-JFA, this dismissal *without prejudice* does *not* count as a "strike" for purposes of the "three strikes" provision of 28 U.S.C. § 1915(g). If Petitioner wishes to bring this action in the future, he should obtain new forms for doing so from the Clerk's Office in Columbia (901 Richland Street, Columbia, South Carolina 29201).

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within the time period set forth under Rules 3 and 4 of the Federal Rules of Appellate Procedure.
