

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

DAVID W. TAYLOR,)	
)	
<i>Petitioner,</i>)	No. 1:11-cv-57/1:93-cr-51
v.)	<i>Mattice</i>
)	
UNITED STATES OF AMERICA,)	
)	
<i>Respondent.</i>)	

MEMORANDUM

The Court has received a petition for a writ of *Audita Querela*¹ under 28 U.S.C. § 1651 or in the alternative a writ of *Error Coram Nobis*, from David W. Taylor (“Petitioner”) [Doc. 1]. Petitioner challenges, *inter alia*, his plea and restitution order.

Petitioner filed this petition without payment of the full filing fee of \$5.00 or a motion to proceed *in forma pauperis*. On May 4, 2011, the Court directed the Clerk to send Petitioner an *in forma pauperis* application and directed Petitioner to pay the \$5.00 filing fee or submit an affidavit of indigency within thirty (30) days from the date of the Order [Doc. 2]. Petitioner was notified that failure to comply with the Court’s order would result in the automatic dismissal of this action without further notice by the Clerk of Court [Doc. 2].

¹ “A writ of Audita Querela is a ‘common law writ constituting the initial process in an action brought by a judgment defendant to obtain relief against the consequences of the judgment on account of some matter of defense or discharge arising since its rendition and which could not be taken advantage of otherwise. May also lie for matters arising before judgment where defendant had no opportunity to raise such matters in defense.’” *Frost v. Snyder*, 13 F3d.Appx. 243, 246 (6th Cir. April 4, 2001) (unpublished table decision), *available in* 2001 WL 406388, at *2, FN1, (quoting, BLACK’S LAW DICTIONARY 131 (6th ed. 1990) (internal cite omitted)).

Petitioner has failed to file an *in forma pauperis* application, pay the \$5.00 filing fee, or file any type of response to the Court's order. Therefore, this action will be **DISMISSED** *sua sponte* for failure to comply with the orders of this Court. Fed. R. Civ. P. 41(b); *Jourdan v. Jabe*, 951 F.2d 108 (6th Cir. 1991).

An appropriate judgment will enter.

/s/Harry S. Mattice, Jr.
HARRY S. MATTICE, JR.
UNITED STATES DISTRICT JUDGE