

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

ANTHONY PIERCE, #1813502

§

VS.

§

CIVIL ACTION NO. 6:13cv595

TODD A. FOXWORTH, ET AL.

§

ORDER OF DISMISSAL

Plaintiff Anthony Pierce, a prisoner confined in the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed this lawsuit pursuant to 42 U.S.C. § 1983. The lawsuit was referred to United States Magistrate Judge K. Nicole Mitchell, who concluded that the lawsuit should be dismissed because Pierce failed to comply with an order to pay an initial partial filing fee of \$45.63.

Pierce filed objections to the Report and Recommendation. He asserted that he “was unable to pay the like of \$400.” In an order (docket entry #13), Magistrate Judge Mitchell noted that the initial partial filing fee was for \$45.63, as opposed to \$400. It was further noted that his average balance for the previous six months was \$228.16 and his average monthly deposits over that same period of time was \$94.17. He had received deposits of at least \$50 every month over the previous six months. Consequently, he had the money to pay the initial partial filing fee. The deadline for him to pay the initial partial filing fee was extended to November 15, 2013. Pierce was placed on notice that the Report and Recommendation would be forwarded for final consideration if he did not timely pay the fee. The Court has received an acknowledgment from him indicating that he received the order on October 18, 2013, but the payment has not been received and Pierce has not offered any

explanation for failing to pay the fee. Consequently, the case should be dismissed for want of prosecution and failure to obey an order.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Pierce to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections raised by Pierce are without merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the Report and Recommendation (docket entry #10) is **ADOPTED**. It is further

ORDERED that the complaint is **DISMISSED** without prejudice for want of prosecution and failure to obey an order. Fed. R. Civ. P. 41(b); Rule 41, Local Rules for the Eastern District of Texas. It is finally

ORDERED that all motions not previously ruled on are hereby **DENIED**.

It is SO ORDERED.

SIGNED this 19th day of November, 2013.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE