

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

JOSEPH A. BUFFEY,

Plaintiff,

v.

**Civil Action No. 2:05CV70
(Judge Maxwell)**

THOMAS McBRIDE, Warden,

Defendant.

**REPORT AND RECOMMENDATION
THAT APPLICATION TO PROCEED
IN FORMA PAUPERIS BE DENIED**

On September 19, 2005, the pro se petitioner, filed a petition pursuant to 28 U.S.C. §2254. He also filed an Application to Proceed In Forma Pauperis.

In his application, the petitioner states that he earns \$55.00 per month. Further, his ledger sheet reveals that the petitioner had an account balance of \$111.39 as of September 14, 2005. Accordingly, the petitioner's request to proceed in forma pauperis should be denied and he should be ordered to pay the full filing fee. The petitioner should also be warned that the failure to pay the full filing fee within the time allowed by the Court will result in the dismissal of his petition.

The petitioner may file, within ten (10) days after being served with a copy of this Recommendation, with the Clerk of the Court, written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the Honorable Robert E. Maxwell, United States District Judge. Failure to timely file objections to the Recommendation set forth above will result in waiver

of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to mail a copy of this Report and Recommendation to the pro se petitioner.

DATED: September 30, 2005

/s John S. Kaul

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE