

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

ROBERT WILLIAM PETTY,

Petitioner,

v.

**Civil Action No. 2:09cv100
(Judge Maxwell)**

JAMES CROSS, Warden,

Respondent.

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

All litigants are required to pay the costs and fees associated with civil lawsuits unless their financial condition warrants a grant of *in forma pauperis* status pursuant to 28 U.S.C. § 1915. Therefore, if a petitioner submits a certified copy of his trust fund statement for the six-month period immediately preceding the filing of the action, then the Court may consider his request. This case is before the undersigned on the petitioner's August 17, 2009, Application and Motion for Leave to Proceed In Forma Pauperis and a Prisoner Trust Account Report with attached ledger statement.

The petitioner's application states that he is employed by the facility where he is housed. In addition, the application states that the petitioner receives funds from outside sources and that he has a money market account which currently contains \$9,000.00. Moreover, the ledger statement to the petitioner's inmate account shows that in the six months preceding the filing of this action, the petitioner received \$504.80 in total deposits. Thus, he averaged \$84.13 in monthly deposits during those six months, and at the time this case was filed, his inmate account had a balance of \$352.85. The filing fee for a habeas corpus action is only \$5.00 and there are generally no other fees or costs associated with this type of action. Accordingly, the undersigned recommends that the

petitioner's request to proceed as a pauper (dckt. 2) be **DENIED** and the petitioner be directed 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 could result in the dismissal of his case.

Within ten (10) days after being served with a copy of this Report and Recommendation, the petitioner may file with the Clerk of the Court, written objections identifying those portions of the recommendation to which objections are made, and the basis for such objections. A copy of such objections shall 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); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk of the Court is directed to mail a copy of this Report and Recommendation to the pro se petitioner via certified mail, return receipt requested, to his last known address as shown on the docket.

DATED: August 20, 2009.



DAVID J. JOEL
UNITED STATES MAGISTRATE JUDGE