

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

JERMAINE A. WILLIAMS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:20-cv-0049
	)	
PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Defendant.	)	

ORDER

BEFORE THE COURT is the Magistrate Judge's September 23, 2021 Report and Recommendation, recommending that Jermaine Williams' ("Williams") petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and his application to proceed in forma pauperis ("IFP") be denied without prejudice and placing Williams on notice that failure to object to the Report and Recommendation within 14 days of receipt of the notice shall bar him from challenging it. (ECF No. 12.) No objection was filed by Williams.

Generally, "plain error review [rather than *de novo* review] is appropriate where a party fails to timely object to a magistrate judge's [report and recommendation] in habeas corpus cases," *Leyva v. Williams*, 504 F.3d 357, 363 (3d Cir. 2007). However, the docket sheet maintained by the Clerk of Court for this action does not indicate that a notice of the September 23, 2021 Report and Recommendation was sent to Williams; thus, he did not have notice that failure to object to the Report and Recommendation constitutes waiver. As a result, the Court will conduct *de novo* review.

A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1)[stating the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress], shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

28 U.S.C.A. § 1915(a)(2).

Williams v. People of the Virgin Islands
Case No. 3:20-cv-0049
Order
Page 2 of 2

Williams filed his petition in the United States District Court of Western District of Virginia by using the form provided by that court. (ECF No. 1). At the same time, he filed his IFP application. (ECF No. 2). By an order dated May 25, 2021, the Magistrate Judge noted that Williams' IFP application appears to be on a form recognized by the State of Virginia, which does not satisfy the requirements of an application to proceed IFP in federal court and directed Williams to file his IFP application using the appropriate form and to attach a certified copy of his inmate trust account for the six-month period preceding the filing of the petition. (ECF No. 7.) On July 29, 2021, the Magistrate Judge issued another order directing Williams to file his IFP application with the appropriate supporting documentation or pay the \$5.00 filing fee no later than September 1, 2021, warning that if he fails to file an appropriate IFP motion or pay the filing fee timely, the matter may be dismissed without further notice. (ECF No. 9). As of the date of this order, Williams failed to file his IFP application with the appropriate supporting documentation, and he did not pay the filing fee. Having failed to file the IFP application as required by 28 U.S.C. § 1915(a)(2), or pay the filing fee, it is hereby

ORDERED that the September 23, 2021 Report and Recommendation, ECF No. 12, is **ADOPTED**; it is further

ORDERED that the motion for leave to proceed in forma pauperis, ECF No. 2, is **DENIED WITHOUT PREJUDICE**; it is further

ORDERED that the petition, ECF No. 1, is **DISMISSED WITHOUT PREJUDICE**; and it is further

ORDERED that the Clerk of Court shall send a copy of this Order to the petitioner and **CLOSE** this case.

Date: September 26, 2022

/s/ Robert A. Molloy
ROBERT A. MOLLOY
Chief Judge