

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

WARREN BALLENTINE,

Petitioner,

v.

**RICK MULGRAVE, Director of the Virgin
Islands Bureau of Corrections,**

Respondent.

1:15-cv-00080

**TO: Warren Ballentine, #16-047VIR, *Pro Se*
Saguaro Correctional Center
1252 East Arica Road
Eloy, AZ 85131**

REPORT AND RECOMMENDATION

This matter is before the Court upon *sua sponte* review. The record shows that on December 28, 2015, Petitioner Ballentine filed a Petition for Writ of Habeas Corpus. (ECF No. 1). Petitioner failed to pay the requisite filing fee pursuant to 28 U.S.C. § 1914 or, in the alternative, file an application and affidavit to proceed *in forma pauperis* ("IFP") under 28 U.S.C. § 1915, which permits a prisoner to commence suit in federal court without prepayment of fees. The failure to pay a filing fee or an application to proceed IFP was not the only deficiency the Court found with Plaintiff's filing. Order (ECF No. 2) entered May 5, 2016.

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In response to the deficient filing, the Court directed the Clerk of Court to send to Petitioner a copy of the District Court's Prisoner Civil Rights Packet¹ and gave Petitioner 30 days from the date of the Order to file a Section 1983 complaint and pay the requisite filing fee or file a motion to proceed without prepayment of fees. (ECF No. 2 at 3). The Court also warned Petitioner that if he failed to comply with the said Order such failure could result in dismissal of this matter. *Id.* A certified mail return receipt was received by the Court on May 10, 2016, (ECF No. 4), indicating that a copy of the Court's Order and forms were delivered to the Golden Grove Adult Correctional Facility and received on behalf of Petitioner on May 9, 2016.

Before the expiration of the 30 days, Petitioner moved the Court for an extension of time because he had been transferred from the facility in St. Croix, U.S. Virgin Islands, to a facility in Arizona. Motion for Enlargement of Time (ECF No. 5). The Court granted the motion (Order (ECF No. 6), entered June 1, 2016), giving Petitioner 60 days from the date of the Order to file a Section 1983 complaint or properly pled Section 2241 petition and pay the requisite filing fee or file a motion to proceed without prepayment of fees. *Id.* The Court directed the Clerk of Court to furnish Petitioner with copies of the docket sheet and

¹ The Prisoner Civil Rights Packet contains the following documents:

- (1) Instructions for filing a *Pro Se* Prisoner Civil Rights Complaint under 42 U.S.C. § 1983;
- (2) Civil Cover Sheet (Form JS 44);
- (3) Complaint (Form VI-P-CR);
- (4) Summons in a Civil Action (Form VI-AO 440);
- (5) Instructions for Proceeding *In Forma Pauperis* in a Civil Rights Action; and
- (6) Motion to Proceed in District Court without Prepaying Fees or Costs (Form VI-AO 240-P-CR).

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all documents filed in the matter, a Prisoner Civil Rights Packet, and a Section 2241 Packet.² *Id.* at 2. The Court also warned Plaintiff that if he failed to comply with the said Order such failure could result in dismissal of this matter. *Id.* A certified mail return receipt was received by the Court on June 16, 2016 (ECF No. 8), indicating that a copy of the Court's Order, the documents, and forms were delivered to the correctional facility in Arizona and received on behalf of Petitioner on June 10, 2016.

After the 60 day-period had expired, the Court issued an Order to Show Cause, ordering Petitioner to comply with the Court's previous Order or show good cause for his failure to comply and directed him to do so by July 17, 2017. Order to Show Cause (ECF No. 9), entered June 12, 2017. The Court gave notice to Plaintiff that failure to comply would result in dismissal of his case. *Id.* The record shows that the Order to Show Cause was received on behalf of Petitioner on June 19, 2017. (ECF No. 11).

The July 17, 2017, deadline has passed, and Plaintiff has not responded to the Order to Show Cause in any way.

Based upon the foregoing, it is now hereby **RECOMMENDED** that this matter be **DISMISSED** pursuant to Federal Rules of Civil Procedure Rule 41(b) for failure to prosecute and failure to comply with a court order.

² The Section 2241 Packet contains the following documents:

(1) Petition under 28 U.S.C. § 2241 for a Writ of Habeas Corpus (Form AO 242); and
(2) Motion to Proceed *In Forma Pauperis* in a 28 U.S.C. § 2254 Action (Form VI-AO 240-2254).

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Any objections to this Report and Recommendation must be filed in writing within fourteen (14) days of receipt of this notice. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. 28 U.S.C. § 636(b)(1); LRCi 72.3.

ENTER:

Dated: January 17, 2018

/s/ George W. Cannon, Jr.

GEORGE W. CANNON, JR.

MAGISTRATE JUDGE