

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

SHARON STEELY,

Petitioner,

v.

Civil Action No. 5:07CV43
(STAMP)

SFF HAZELTON,

Respondent.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Background

On February 20, 2007, Sharon Steely, an inmate at Secure Female Facility ("SFF") Hazelton, in Bruceton Mills, West Virginia, filed a pro se¹ petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 in the United States District Court for the Eastern District of Kentucky. The case was subsequently transferred to this Court, and this matter was referred to United States Magistrate Judge James E. Seibert for report and recommendation pursuant to Local Rule of Prisoner Litigation Procedure 83.09.

In her § 2241 petition, the petitioner seeks an order directing the Bureaus of Prisons to give her credit against her federal sentence for time served in state custody. However, the petitioner failed to pay the required filing fee, and she did not

¹"Pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1237 (7th ed. 1999).

submit an application for leave to proceed in forma pauperis ("IFP").² The Clerk of Court for this Court sent the petitioner two notices of deficient pleading, one on March 22, 2007, which erroneously instructed her that the filing fee was \$350.00, and the other on March 26, 2007, which correctly informed her that the filing fee was \$5.00.

On May 8, 2007, Magistrate Judge Seibert, upon reviewing the petitioner's file, recognized that the two notices containing different information may have confused the petitioner. Accordingly, he entered an order giving the petitioner an additional twenty days in which to pay the required fee of \$5.00 or submit the application forms for proceeding IFP. The petitioner did neither, and on June 25, 2007, Magistrate Judge Seibert entered a report and recommendation recommending that the case be dismissed without prejudice for the petitioner's failure to prosecute her claim. The report and recommendation provided for ten additional days for the petitioner to object or otherwise file to explain her reasons for noncompliance. No objections or other filings or correspondence were filed.

II. Standard of Review

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's

²"In forma pauperis" describes the permission granted to a poor person to proceed without liability for court fees or costs. Black's Law Dictionary 779 (7th ed. 1999).

recommendation to which objection is timely made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate and, under these circumstances, the parties' right to de novo review is waived. See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Because petitioner did not file objections, this Court reviews the report and recommendation of the magistrate judge for clear error.

The magistrate judge found that the petitioner has neither paid the required filing fee nor filed a request to proceed in forma pauperis. The magistrate judge further found that the petitioner has not filed a motion for an extension of time in which to file the fee or the required forms, nor has she otherwise communicated with this Court to explain her reasons for noncompliance. This Court concludes that the magistrate judge's findings are not clearly erroneous, and, accordingly, finds that the petitioner's § 2241 petition should be denied without prejudice.

III. Conclusion

For the reasons set forth above, this Court finds that the magistrate judge's recommendation is not clearly erroneous and hereby AFFIRMS and ADOPTS the report and recommendation of the magistrate judge in its entirety. Accordingly, the petitioner's

motion, filed pursuant to 28 U.S.C. § 2241, for an order directing the Bureau of Prisons to give the petitioner credit for time served in state custody is DENIED WITHOUT PREJUDICE for failure to prosecute her claim. Further, it is ORDERED that this civil action be DISMISSED and STRICKEN from the active docket of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the pro se petitioner and to counsel of record herein.

DATED: January 22, 2008

/s/ Frederick P. Stamp, Jr. _____
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE