

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-1491

Samuel Tobin McKaig

Plaintiff - Appellant

v.

State of Arkansas

Defendant - Appellee

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:22-cv-01213-JM)

JUDGMENT

Before GRUENDER, SHEPHERD, and KOBES, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

The motions for leave to proceed on appeal in forma pauperis are denied as moot.

May 30, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

SAMUEL TOBIN McKAIG
ADC #177380

PETITIONER

v. 4:22-cv-01213-JM-JJV

STATE OF ARKANSAS

RESPONDENT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge James M. Moody, Jr. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. Your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of this recommendation. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

DISPOSITION

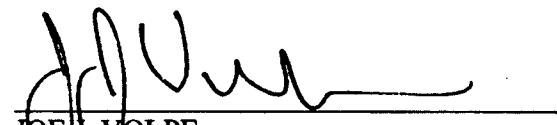
On December 5, 2022, Petitioner Samuel Tobin McKaig filed a *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) On December 8, 2022, I entered an Order directing Petitioner to either pay the \$5.00 statutory filing fee or file an Application to Proceed in District Court Without Prepaying Fees or Costs. (Doc. No. 4.) Petitioner was given thirty (30) days to comply with the Order. (*Id.*) That time has passed, and Petitioner has failed to pay the filing fee or file a motion to proceed *in forma pauperis*.

To avoid dismissal, Petitioner should either pay the \$5 statutory filing fee in full or file a proper and complete motion to proceed *in forma pauperis* during the fourteen (14) day objection period. Otherwise, this cause of action should be DISMISSED without prejudice in accordance

with Local Rule 5.5(c)(2).¹

IT IS, THEREFORE, RECOMMENDED that unless Petitioner either pays the \$5 filing fee or files a proper and complete motion to proceed *in forma pauperis* during the fourteen (14) day objection period, this cause of action (Doc. No. 1) should be DISMISSED without prejudice.

DATED this 18th day of January 2023.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE

¹ Local Rule 5.5(c)(2) provides: "It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. A party appearing for himself/herself shall sign his/her pleadings and state his/her address, zip code, and telephone number. If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure."

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ORDER

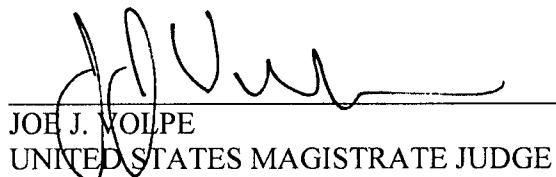
Samuel Tobin McKaig (“Petitioner”) has filed a *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) However, he has neither paid the \$5.00 statutory filing fee nor filed a motion to proceed *in forma pauperis*. An inmate seeking *in forma pauperis* status must submit (1) an Application to Proceed in District Court Without Prepaying Fees or Costs; (2) a Calculation of Initial Payment of Filing Fee sheet, **prepared and signed** by an authorized official of the prison or detention facility; and (3) “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,” obtained from the “appropriate official” of the facility where the inmate is confined. 28 U.S.C. § 1915(a).

IT IS, THEREFORE, ORDERED that:

1. The Clerk shall mail to Petitioner an Application to Proceed in District Court Without Prepaying Fees or Costs with a calculation sheet.
2. If Petitioner wishes to proceed with this action, he must, within thirty (30) days of the date of this Order, either (1) pay the \$5.00 statutory filing fee in full; or (2) file a properly completed Application to Proceed in District Court Without Prepaying Fees or Costs with a

calculation sheet.¹ Failure to timely and properly comply with this Order may result in dismissal of this action without prejudice, pursuant to Local Rule 5.5(c)(2).²

DATED this 8th day of December 2022.



JOHN J. VOLPE
UNITED STATES MAGISTRATE JUDGE

¹ The Calculation of Initial Payment of Filing Fee sheet must be prepared and signed by an authorized official at the incarcerating facility.

² Local Rule 5.5(c)(2) provides: "It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. A party appearing for himself/herself shall sign his/her pleadings and state his/her address, zip code, and telephone number. If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure."

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STATE OF ARKANSAS

RESPONDENT

ORDER

The Court has received a Recommendation for dismissal filed by Magistrate Judge Joe J. Volpe. After careful review of those Findings and Recommendations, the timely objections received, and a *de novo* review of the record, the Court concludes that the Findings and Recommendations should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects. Plaintiff was ordered to pay the \$5 filing fee or file a proper and complete motion to proceed *in forma pauperis*. While Plaintiff has finally filed a completed calculation sheet, he has failed to file the first two pages of the *in forma pauperis* motion with it. The motion is not complete. Therefore, the case will be dismissed without prejudice.

Plaintiff's complaint is DISMISSED without prejudice. The Clerk is directed to close the case.

IT IS SO ORDERED this 6th day of February, 2023.



UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
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STATE OF ARKANSAS

RESPONDENT

JUDGMENT

Pursuant to the Order entered in this matter on this date, it is Considered, Ordered, and Adjudged that this case is DISMISSED without prejudice. The relief sought is denied. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an in forma pauperis appeal from the order adopting this recommendation and accompanying judgment would not be taken in good faith.

IT IS SO ORDERED this 6th day of February, 2023.



James M. Moody Jr.
United States District Judge