

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

WILLIAM ASKEW,

Petitioner,

v.

CASE NO. 21-3202-SAC

SHANNON MEYER,

Respondent.

MEMORANDUM AND ORDER

When Petitioner William Askew filed this *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 on August 30, 2021, he failed to pay the statutory filing fee of \$5.00 or submit a motion to proceed in forma pauperis. Accordingly, the following day, the Court sent notice to Petitioner that he needed to either pay the fee or submit a motion to proceed in forma pauperis and the required documentation. (Doc. 2.) The notice advised Petitioner that if he failed to do so within 30 days, this action might be dismissed without further notice for failure to comply with a court order. *Id.*

Petitioner failed to submit a motion to proceed in forma pauperis or pay the filing fee and, in an order dated October 12, 2021, the Court gave Petitioner a final opportunity to comply with this requirement. (Doc. 5.) The order granted Petitioner until November 12, 2021, to either pay the filing fee or submit a motion to proceed in forma pauperis. *Id.* That deadline has passed and Petitioner has not done so.

Under Federal Rule of Civil Procedure 41(b), a district court may dismiss an action “if the plaintiff fails to prosecute or to comply with these rules or a court order.” Fed. R. Civ. P. 41(b); *See also Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003) (noting that Rule 41(b) “has long

been interpreted to permit courts to dismiss actions sua sponte for a plaintiff's failure . . . to comply with the . . . court's orders"). Petitioner has twice failed to comply with the Court's order to either pay the \$5.00 statutory filing fee or submit a motion to proceed in forma pauperis and the required documentation. Thus, the Court concludes that this matter should be dismissed without prejudice under Rule 41(b). Because this matter will be dismissed under Rule 41(b), Respondent is no longer required to file the Pre-Answer Response currently due on or before January 11, 2022. (See Doc. 7.)

IT IS THEREFORE ORDERED that this matter is **dismissed without prejudice** for failure to comply with a court order pursuant to Fed. R. Civ. P. 41(b). Respondent is no longer required to file the Pre-Answer Response currently due on or before January 11, 2022.

IT IS SO ORDERED.

DATED: This 19th day of November, 2021, at Topeka, Kansas.

S/ Sam A. Crow

SAM A. CROW
U.S. Senior District Judge