

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JAMES OWEN SPURLOCK, #1546080 §
VS. § CIVIL ACTION NO. 6:10cv460
DIRECTOR, TDCJ-CID § (CONSOLIDATED WITH
§ CIVIL ACTION NO. 6:10cv461)

MEMORANDUM OPINION AND ORDER

Came on for consideration, Petitioner's First Motion for Extension of Time to File his Objections to Report & Recommendation of U.S. Magistrate Judge with Brief in Support (docket entry #20).

On February 7, 2013, the assigned Magistrate Judge issued the Report and Recommendation to which Petitioner refers. *See* docket entry #17. No acknowledgment of receipt and no objections (or motion for extension of time therefor) having been received, the Court issued an Order of Dismissal, adopting the Report and Recommendation, on March 4, 2013, and concomitantly entered Final Judgment. *See* docket entries #18, 19.

In his Motion for Extension of Time, Petitioner asserts he received the Report and Recommendation on February 21, 2013, a full two weeks after it issued and was mailed to him. *See* Motion at 1. He has provided no evidence that this is the case, such as a copy of the prison unit mailroom log showing its receipt, an affidavit of the mailroom personnel or even a declaration sworn under penalty of perjury that he received it as stated. He did not mail his motion until March 3, 2013, almost simultaneously with the Court's Order of Dismissal, and nearly a month after the

Report and Recommendation issued. His assertion that he required additional time in which to prepare his objections is called into question by the very 10-day delay he took between the time he claims he received the Report and Recommendation and the date on which he mailed his motion, which itself is brief and uncomplicated.

Petitioner's recourse at this point is to file a motion to alter or amend the judgment or for relief from a final judgment (commonly, if not accurately, referred to as a "motion for reconsideration"). *See Fed. R. Civ. P. 59(e), 60(b).* If he does so, he should assert the issues he wished to raise as objections in the first instance and show cause why the judgment should be altered or amended or he should receive such other relief as he may assert.

It is accordingly

ORDERED that Petitioner's First Motion for Extension of Time to File his Objections to Report & Recommendation of U.S. Magistrate Judge with Brief in Support (docket entry #20) is **DENIED** as **MOOT**.

It is SO ORDERED.

SIGNED this 3rd day of April, 2013.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE