

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

JOHNNY AL HUNTER §
v. § CIVIL ACTION NO. 6:11cv216
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Johnny Al Hunter, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of the computation of his sentence. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Hunter complains that two years, one month, and three days of work time credits were wrongfully taken from him after his parole was revoked. The Respondent has answered the petition and argues that the statute of limitations has expired on Hunter’s claims. Hunter filed a response to the answer, but this response challenges the validity of Hunter’s underlying conviction, which is not at issue in this case.

After review of the pleadings and records, the Magistrate Judge issued a Report recommending that the petition be dismissed as successive. The Magistrate Judge observed that this is the second habeas corpus petition which Hunter has filed challenging the computation of his time credits. While Hunter couched his prior petition in terms of “good time” and the present petition in terms of “work time,” the Magistrate Judge noted that the dates cited in the two petitions were the same and that “work time” is simply a form of good time. Thus, the Magistrate Judge said that

Hunter's claims were or could have been raised in the prior petition; as a result, Hunter is required to obtain permission from the Fifth Circuit to file a successive petition, as set out in 28 U.S.C. §2244(b)(3). Because he did not do so, the Magistrate Judge recommended that the petition be dismissed.

Hunter received a copy of the Magistrate Judge's Report on October 25, 2011, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 15) is hereby ADOPTED as the opinion of the District Court. It is further


ORDERED that the above-styled application for the writ of habeas corpus is hereby DISMISSED without prejudice, with refiling conditioned upon receipt of permission from the Fifth Circuit Court of Appeals to file a successive petition. Hunter may not refile his petition until he obtains such permission, and the dismissal of the present petition shall have no effect upon Hunter's right to seek permission to file a second or successive petition. It is further

ORDERED that the Petitioner Johnny Al Hunter is hereby DENIED a certificate of appealability *sua sponte*. The denial of this certificate shall have no effect upon Hunter's right to seek permission to file a second or successive petition, nor upon his right to fully pursue such a petition once this permission has been obtained. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

It is SO ORDERED.

SIGNED this 19th day of December, 2011.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE