

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

DOUGLAS A. MORIN,

Petitioner,

v.

CASE NO. 6:15-cv-1981-Orl-37KRS

SECRETARY, DEPARTMENT
OF CORRECTIONS, et al.,

Respondents.

ORDER

This cause is before the Court on Petitioner's "Objection/Motion for Rehearing and or Reconsideration" (Doc. 47). Petitioner objects to Magistrate Judge Spaulding's Order denying Petitioner's Motion to Compel (Doc. 45).

A Magistrate Judge's ruling on a non-dispositive matter must be affirmed unless "it has been shown that the magistrate judge's order is clearly erroneous or contrary to the law." 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a) ("The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to the law."). The clearly erroneous standard is extremely deferential. A finding is only clearly erroneous if "the reviewing court, after assessing the evidence in its entirety, is left with a definite and firm conviction that a mistake has been committed." *Krys v. Lufthansa German Airlines*, 119 F.3d 1515, 1523 (11th Cir. 1997).

Petitioner has not demonstrated that Magistrate Judge Spaulding's Order is clearly erroneous or contrary to the law. Petitioner sought numerous state court transcripts,

copies of scoresheets, and a copy of Detective Whittier's testimony. Respondents provided copies of the transcripts and scoresheets in the Appendix (Doc. 40). Additionally, Respondents noted that they were not in possession of several of the transcripts or the audio recording of Detective Whittier's testimony. *Id.* However, Respondents provided a transcript of the detective's testimony. *Id.* Respondents will not be compelled to produce documents which have already been provided or which are not in their possession. *Odom v. Mobile Infirmery*, No. 06-0511-WS-C, 2008 WL 2157137, at *1 (S.D. Ala. May 20, 2008) (stating "[a]bsent evidence of spoliation (which is not suggested to have occurred here), this Court will not penalize a party for failing to produce documents it does not have"). Accordingly, it is **ORDERED** that Petitioner's objections are **OVERRULED** and his Motion for Rehearing or Reconsideration is **DENIED**.

DONE AND ORDERED in Orlando, Florida, this 1st day of February, 2017.




ROY B. DALTON JR.
United States District Judge

Copies to:
OrlP-3 2/1
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