

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

CLARENCE WALLESKE,

Petitioner,

v.

CASE NO. 1:08-cv-00016-MP-AK

DEPARTMENT OF CORRECTIONS,
JAMES R MCDONOUGH,
WALTER A MCNEIL,

Respondents.

ORDER

This matter is before the Court on two Report and Recommendation's of the Magistrate Judge, Docs. 20 and 29. In the first, the Magistrate Judge recommends that the motion to dismiss this case as untimely filed be denied because only 311 days had passed that were not tolled by properly filed collateral attacks. With regard to this Report and Recommendation, the time for filing objections has passed, and none have been filed. The Court agrees with the Magistrate Judge's analysis of the time that has accrued and that counts against the Petitioner's one year time limitation. Accordingly, the motion to dismiss is denied, and the matter will be remanded to the Magistrate Judge for further proceedings.

In the motion for restraining order, the Petitioner claims that prison officials have inappropriately seized his legal materials but he does not go so far as to claim that said seizure has affected his ability to litigate the instant matter, nor that he exhausted prison administrative

remedies. Accordingly, the Court agrees that he has an adequate remedy at law and denies the motion for restraining order. This matter is remanded to the Magistrate Judge for further proceedings.

DONE AND ORDERED this 3rd day of June, 2009

s/Maurice M. Paul

Maurice M. Paul, Senior District Judge