

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

DANNY GREEN,

Petitioner,

v.

CASE NO. 1:08-cv-131-MMP-AK

WALTER MCNEIL,

Respondent.

REPORT AND RECOMMENDATION

This cause is before the Court on Doc. 54, motion for immediate hearing, which was referred to the undersigned for consideration by the District Judge. Doc. 55. Having carefully considered the matter, the Court recommends that the motion be denied. There is no indication that Petitioner's post-conviction motions, attacking in part the state court's jurisdiction to enter judgment and impose sentence because of an alleged deficiency in the information, have concluded, and thus, the instant petition, which was dismissed without prejudice for failure to exhaust, remains unexhausted. *See also* Docs. 51-52 (Eleventh Circuit denial of certificate of appealability). Once Petitioner has exhausted his available state remedies, he may file a new petition for writ of habeas corpus in this Court.

To the extent that Petitioner seeks injunctive relief based upon his alleged continued lack of access to the Court and his need for immediate medical attention, these are issues which

should be raised in the § 1983 action now pending, Case No. 4:09cv212-MMP/AK, as his medical condition lies at the heart of that proceeding.

In light of the foregoing, it is respectfully **RECOMMENDED** that the motion for immediate hearing, Doc. 54, be **DENIED**.

IN CHAMBERS at Gainesville, Florida, this 21st day of July, 2009.

s/ A. KORNBLUM

ALLAN KORNBLUM
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

A party may file specific, written objections to the proposed findings and recommendations within 15 days after being served with a copy of this report and recommendation. A party may respond to another party's objections within 10 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.