

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

TED SMITH,

Petitioner,

v.

CASE NO. 1:11-cv-00265-MP-GRJ

STATE OF FLORIDA, and
PAM BONDI, Florida Attorney General,

Respondents.

ORDER

This matter is before the Court on Petitioner's Objection to Magistrate Order Dated December 28, 2012. (Doc. 29). On December 28, 2012, the magistrate judge entered an order denying petitioner's "Motion to Vacate Void/ Judgment/ Order and Release Petitioner According to Federal Rule Civil Procedure 60(b)(4)." The magistrate judge noted that petitioner presented an identical claim in the motion to vacate as he presented in his original § 2254 petition. Accordingly, the magistrate judge construed the purported motion under Rule (60)(b)(4) as a motion to amend petitioner's pending motion under 28 U.S.C. § 2254. *See Gonzalez v. Crosby*, 545 U.S. 524, 530-531 (2005). Because the proposed amendment offered no new legal arguments or evidence, the magistrate judge denied petitioner's motion to amend. Petitioner now objects to the magistrate judge's denial of that motion, pursuant to Rule 72 of the Federal Rules of Civil Procedure.

Under Rule 72 of the Federal Rules of Civil Procedure, a party may serve and file objections to a magistrate judge's order on a non-dispositive matter within 14 days after being served with a copy. 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 law.

Upon consideration of the magistrate judge's order (doc. 28) and petitioner's timely filed objections (doc. 29), I have determined that the order is neither clearly erroneous nor contrary to law.

ORDERED AND ADJUDGED:

1. Petitioner's objections to the magistrate judge's order denying his motion to vacate (doc. 29) is DENIED.
2. The magistrate judge's order (doc. 28) is AFFIRMED.

DONE AND ORDERED this 8th day of January, 2013

s/Maurice M. Paul
Maurice M. Paul, Senior District Judge