

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

BRYAN WHITNEY,

Petitioner,

v.

CASE NO. 4:13-cv-129-MW/CAS

N. C. ENGLISH,

Respondent.

_____ /

**ORDER CONFIRMING THIS COURT IS NOT DIVESTED
OF JURISDICTION**

This Court has considered, without hearing, Petitioner's "Appeal of Magistrate's Decision." ECF No. 16.

Petitioner, proceeding pro se, filed a petition for habeas corpus pursuant to 28 U.S.C. § 1915. ECF No. 1. Petitioner subsequently filed an amended petition, ECF No. 3, to which Respondent has filed a response. ECF No. 10. Thereafter, Petitioner moved for "summary judgment" arguing that Respondent failed to file a responsive pleading. ECF No. 12. By order dated April 1, 2014, the Magistrate denied the motion concluding that a judgment by default is not appropriate in a habeas corpus proceeding. ECF No. 15. Now, Petitioner appeals the denial of his motion seeking a default judgment. ECF No. 16.

“Appellate courts are without jurisdiction to hear appeals directly from federal magistrates.” *United States v. Renfro*, 620 F.2d 497, 500 (5th Cir. 1980). Moreover, “a notice of appeal filed with respect to a non-appealable order does not have any effect on the district court’s jurisdiction.” *United States v. Riolo*, 398 F. App’x 568, 571 (11th Cir. 2010).

For these reasons,

IT IS ORDERED:

This Court is not divested of jurisdiction and shall consider the magistrate’s report and recommendation upon its submission once petitioner has been afforded an opportunity to object to same.

SO ORDERED on April 14, 2014.

s/Mark E. Walker
United States District Judge