

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

CASEY KIA TABATABEE,	:	
	:	
Petitioner,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	2:12-CV-0150-RWS
DAVID BARROW,	:	
	:	
Respondent.	:	

ORDER

This case is before the Court for consideration of the Report and Recommendation [32] of Magistrate Judge J. Clay Fuller and Petitioner’s Motion for Continuance or for an Extension of Time [38]. After reviewing the record, the Court enters the following Order.


In the Report and Recommendation, Judge Fuller recommends dismissal of the Petition without prejudice because Petitioner has failed to exhaust his state court remedies. Petitioner filed Objections [37] asserting that he should not be required to exhaust state remedies for reasons he has articulated in other submissions to the Court. Having considered Petitioner’s Objections, the Court receives the Report and Recommendation with approval and adopts it as the Opinion and Order of this Court. Accordingly, Respondent’s Motion to

Dismiss for Lack of Exhaustion [26] is **GRANTED**, and Petitioner's Motion to Strike Dismissal Motion [29] is **DENIED**. Petitioner's Habeas Corpus Petition [1] is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust state court remedies. Further, Petitioner's Motion for Specific Relief [15] is **DENIED**; and Petitioner's remaining Motions, all procedural in nature [8, 9, 16 through 18, 20, 21, 23, and 27] are **DENIED AS MOOT**.

After issuance of the Report and Recommendation, Petitioner filed a Motion for Continuance or for an Extension of Time [38] in which he encouraged the Court to continue this matter so as to allow the Georgia Supreme Court to rule on his Application for a Certificate of Probable Cause to appeal the denial of his state habeas corpus relief and/or for the Eleventh Circuit Court of Appeals to rule on his actual innocence claim in his Section 2241 case from the Middle District of Georgia. Because the dismissal of this Petition is without prejudice, the Court finds that a continuance is not warranted. Therefore, Petitioner's Motion [38] is **DENIED**.

As recommended in the Report and Recommendation, the Court further finds that a Certificate of Appealability is not appropriate. Therefore, Petitioner is **DENIED** a Certificate of Appealability.

SO ORDERED, this 8th day of February, 2013.



RICHARD W. STORY
United States District Judge