

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

ERIC MITCHELL BLANTON,

Petitioner,

v.

THE STATE,

Respondent.

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CV416-213

REPORT AND RECOMMENDATION

Noting that Eric Mitchell Blanton had *pro se* filed a mishmash of “habeas” filings on a home-brewed petition, rather than a court-supplied 28 U.S.C. § 2254 form, the Court directed him to use the court-supplied form and answer all of its questions. Doc. 19 at 1-2. Rather than comply, petitioner has filed a nonsensical “Durable Power of Attorney” appointing Bill and Melinda Gates to be his attorneys-in-fact. Doc. 25. In an accompanying “Notice of Filing,” he appears to have sent document requests to various Georgia courts. Doc. 26.

Blanton’s petition case should be **DISMISSED WITHOUT PREJUDICE**. See L.R. 41(b); see *Betty K Agencies, Ltd. v. M/V Monada*,

432 F.3d 1333, 1337 (11th Cir. 2005) (district courts may *sua sponte* dismiss an action pursuant to Fed. R. Civ. P. 41(b) if the plaintiff fails to comply with court rules or a court order); *Donaldson v. Clark*, 819 F.2d 1551, 1557 n. 6 (11th Cir. 1987) (district court has inherent authority to sanction parties for “violations of procedural rules or court orders,” up to and including dismissals with prejudice); *McKinley v. FDIC*, 2016 WL 930291 at * 2 (11th Cir. Mar. 11, 2016) (affirming this Court’s Rule 41(b) dismissal because “(1) Plaintiff blatantly flouted the magistrate judge’s order, (2) the order warned Plaintiff of dismissal, and (3) the district judge dismissed without prejudice”).

Applying the Certificate of Appealability (COA) standards set forth in *Brown v. United States*, 2009 WL 307872 at * 1-2 (S.D. Ga. Feb. 9, 2009), the Court discerns no COA-worthy issues at this stage of the litigation, so no COA should issue either. 28 U.S.C. § 2253(c)(1); Rule 11(a) of the Rules Governing Habeas Corpus Cases Under 28 U.S.C. § 2255 (“The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.”) (emphasis added). Any motion for leave to appeal *in forma pauperis* therefore is moot.

This Report and Recommendation (R&R) is submitted to the district judge assigned to this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 72.3. Within 14 days of service, any party may file written objections to this R&R with the Court and serve a copy on all parties. The document should be captioned "Objections to Magistrate Judge's Report and Recommendations." Any request for additional time to file objections should be filed with the Clerk for consideration by the assigned district judge.

After the objections period has ended, the Clerk shall submit this R&R together with any objections to the assigned district judge. The district judge will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to timely file objections will result in the waiver of rights on appeal. 11th Cir. R. 3-1; *see Symonett v. V.A. Leasing Corp.*, 648 F. App'x 787, 790 (11th Cir. 2016); *Mitchell v. U.S.*, 612 F. App'x 542, 545 (11th Cir. 2015).

SO REPORTED AND RECOMMENDED, this 24th day of
February, 2017.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA