


FILED
U.S. DISTRICT COURT
SAVANNAH DIV.

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

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BRIAN JAMES IVEY,)
)
Petitioner,)
)
v.)
)
SHAY HATCHER, Warden,)
)
Respondent.)
_____)

CASE NO. CV418-057

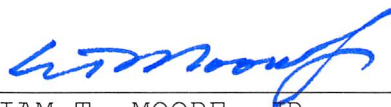
O R D E R

Before the Court is the Magistrate Judge's Report and Recommendation (Doc. 17), to which objections have been filed (Doc. 18). In the report and recommendation, the Magistrate Judge recommends that this Court dismiss Petitioner's Petition for Writ of Habeas Corpus because Petitioner has an ongoing state habeas proceeding. In his objections, Petitioner contends that his petition should not be dismissed because there has been an exceedingly long delay in his ongoing state habeas proceeding. Upon review of the record, there has been an unexplained delay in Petitioner's state habeas proceeding. The record shows that he filed his petition in the Superior Court of Hancock County in 2006 and that the case has remained dormant for many years.

Although Petitioner is correct that his case was delayed for many years, the record also shows that in June of this year

an evidentiary hearing was scheduled in Petitioner's state habeas case. Because there has been recent movement in Petitioner's state habeas proceeding, it is clear that Petitioner has a viable state procedure available to him. Accordingly, the report and recommendation is **ADOPTED** as the Court's opinion in this case. As a result, Petitioner's petition (Doc. 1) is **DISMISSED** for failure to exhaust and Respondent's Motion to Dismiss (Doc. 14) is **GRANTED**. In addition, Petitioner is not entitled to a Certificate of Appealability, rendering moot any request to proceed in forma pauperis on appeal. The Clerk of Court is **DIRECTED** to close this case.

SO ORDERED this 25th day of September 2018.



WILLIAM T. MOORE, JR.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA