

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

HANSEL E. CAIN,

Petitioner,

v.

W.A. SHERROD,

Respondent.

Case No. 08-cv-678-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on petitioner Hansel E. Cain's "Failure to Communicate Motion" (Doc. 21), which the Court construes as an appeal of Magistrate Judge Clifford J. Proud's August 10, 2009, orders (Docs. 19 & 20) denying Cain's motions requesting that the Court file criminal charges (Doc. 16) and summon a special grand jury (Doc. 17).

Cain objects to the magistrate's ruling on his pretrial motions in the absence of his consent. However, Cain's consent is not needed to refer this case to a magistrate judge for pretrial proceedings, *see* 28 U.S.C. § 636(b)(1); Local Rule 72.1(a)(1) & (2), and such referral is in existence at this time. Cain's consent is only needed to refer this case to a magistrate judge for a final disposition, *see* 28 U.S.C. § 636(c)(1); Fed. R. Civ. P. 73(a); Local Rule 72.2(b)(3). Such reference has not been made and will not be made unless all parties consent to the reference.

As for the review of Magistrate Judge Proud's rulings, a district court reviewing a magistrate judge's decision on nondispositive issues should only modify or set aside that decision if it is clearly erroneous or contrary to law. *See* 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); Local Rule 73.1(a). Accordingly, the Court will affirm Magistrate Judge Proud's decision unless his factual findings are clearly erroneous or his legal conclusions are contrary to

law. *Id.* The Court has reviewed Magistrate Judge Proud's August 10, 2009, orders (Docs. 19 & 20) denying Cain's motions (Docs. 16 & 17) and finds that they are not clearly erroneous or contrary to law.

To the extent Cain's motions may be construed to request injunctive relief, the Court construes Magistrate Judge Proud's orders as recommendations under 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b)(1) and Cain's appeals as objections to those orders under 28 U.S.C. § 636(b)(1), Federal Rule of Civil Procedure 72(b)(2) and Local Rule 73.1(b). The Court must review *de novo* the portions of the report to which objections are made. The Court has reviewed Magistrate Judge Proud's orders *de novo* and, for the reasons stated therein, the Court makes the same findings and conclusions and renders the same rulings.

For the foregoing reasons, the Court **AFFIRMS** Magistrate Judge Proud's August 10, 2009, orders (Docs. 19 & 20).

IT IS SO ORDERED.
DATED: August 25, 2009

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE