

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

WILLIAM DALE CARTER,

Plaintiff,

vs.

SHAWNEE PRISON WARDEN MARTIN, *et al.*,

Defendants.

Case No. 12-cv-205-JPG-PMF

MEMORANDUM AND ORDER

This matter comes before the Court on Carter's motions for extension of time to file a late notice of appeal and for certificate of appealability (Doc. 54). For the following reasons the Court denies Carter's motions.

Carter wishes to the appeal Magistrate Judge Philip M. Frazier's denial of Carter's motion to amend complaint. Carter does not indicate whether he wishes to appeal that order to this Court or to the Court of Appeals for the Seventh Circuit. However, because he seeks a certificate of appealability, the Court infers that he wishes to take an interlocutory appeal to the appellate court.

Title 28 U.S.C. § 1292(b) governs interlocutory appeals and provides as follows:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

"Interlocutory appeal is appropriate when (1) the appeal presents a question of law; (2) it is controlling; (3) it is contestable; (4) its resolution will expedite the resolution of the litigation; and (5) the petition to appeal is filed in the district court within a reasonable amount of time after

entry of the order sought to be appealed.” *Boim v. Quranic Literacy Inst. and Holy Land Found. for Relief and Dev.*, 291 F.3d 1000, 1007 (7th Cir. 2002). A “question of law” refers “to a question regarding the meaning of a statutory or constitutional provision, regulation or common law doctrine.” *Id.*

Here, Carter’s motion seeks to appeal a discretionary ruling to deny the amendment of his complaint rather than a question of law. *See Orix Credit Alliance v. Taylor Mach. Works*, 125 F.3d 468, 480 (7th Cir. 1997) (the decision whether to grant a party leave to amend the pleadings is a matter left to the discretion of the district court). Accordingly, this matter is not appropriate for interlocutory appeal to the appellate court.

To the extent Carter seeks to appeal Magistrate Judge Frazier’s decision to this Court, the Court denies that appeal. A district court reviewing a magistrate judge’s decision on nondispositive issues should modify or set aside that decision if it is clearly erroneous or contrary to law. *See* Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A). Accordingly, the Court will affirm Magistrate Judge Frazier’s decision unless his factual findings are clearly erroneous or his legal conclusions are contrary to law. *Id.* After a review of the order in question, the Court does not find Magistrate Judge Frazier’s decision clearly erroneous or contrary to law.

For the foregoing reasons, the Court **DENIES** Carter’s motions for leave to file late notice of appeal and for certificate of appealability (Doc. 54).

IT IS SO ORDERED.

DATED: February 15, 2013

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