

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**KURT BAGGS**

**CIVIL ACTION**

**VERSUS**

**NO. 09-6808**

**TERRY TERRELL, WARDEN ALLEN  
CORRECTIONAL CENTER**

**SECTION "S"(4)**

**O R D E R**

The Court, having considered the complaint, the record, the applicable law, the Report and Recommendation of the United States Magistrate Judge (Doc. #22), the petitioner's Objection to the Magistrate Judge's Report and Recommendation (Doc. #24), the respondent's Response to the Petitioner's Objections to the Report and Recommendations (Doc. #25), and the petitioner's Motion for Leave to Amend Petition for *Habeas Corpus* (Doc. #23), hereby approves the Report and Recommendation of the United States Magistrate Judge as to the finding that petitioner failed to exhaust his state court remedies on the following four claims: (1) ineffective assistance of counsel for failing to present evidence of Baggs' prior medical history or prescription drug use, failing to recognize Baggs' incompetence to accept a plea, advising Baggs to accept a plea with two consecutive ten year sentences, and not seeking a determination of competency at the time of the offense or on the day of the guilty plea and sentencing; (2) indeterminate sentence based on the consecutive assignment of the sentences at the same time; (3) no opportunity for proportionality assessment where there was no individual appraisal of the appropriateness and proportionality of the sentences; and (4) cumulative errors by counsel amounting to ineffective assistance of counsel for failure to obtain prior medical records, and adopts it as its opinion in this matter. However, the court finds that Baggs did exhaust his state court remedies with respect to his claim that his rights

under the Sixth Amendment were violated when the trial court considered the hearsay treatment notes of Dr. Higgins in its denial of his motion for post conviction relief.

In his Motion for Leave to Amend Petition for *Habeas Corpus*, Baggs prays that this court dismiss the previously referenced unexhausted claims and proceed on the exhausted claims.

**IT IS ORDERED** that Baggs' Motion for Leave to Amend Petition for *Habeas Corpus* (Doc. #23) is **GRANTED**.

**IT IS FURTHER ORDERED** that Baggs's claims of (1) ineffective assistance of counsel for failing to present evidence of Baggs' prior medical history or prescription drug use, failing to recognized Baggs' incompetence to accept a plea, advising Baggs to accept a plea with two consecutive ten year sentences, and not seeking a determination of competency at the time of the offense or on the day of the guilty plea and sentencing; (2) indeterminate sentence based on the consecutive assignment of the sentences at the same time; (3) no opportunity for proportionality assessment where there was no individual appraisal of the appropriateness and proportionality of the sentences; and (4) cumulative errors by counsel amounting to ineffective assistance of counsel for failure to obtain prior medical records are **DISMISSED WITHOUT PREJUDICE** for failure to exhaust.

**IT IS FURTHER ORDERED** that this matter is hereby referred to the United States Magistrate Judge for a Report and Recommendations on the merits of Baggs' remaining claims.

New Orleans, Louisiana, this 20th day of September, 2012.

  
**MARGARET KILGANNON**  
UNITED STATES DISTRICT JUDGE