

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

**FRANCIS BRAUNER
VERSUS
BURL CAIN, WARDEN**

**CIVIL ACTION
NO. 14-1966
SECTION "A"(4)**

ORDER AND REASONS

The Report and Recommendation (Rec. Doc. No. 18) issued by the undersigned Magistrate Judge on February 13, 2015, recommended dismissal of Francis Brauner's petition for writ of habeas corpus as time barred because he allowed the federal filing period to expire on August 19, 2005, nine years before the petition was filed. On review of Brauner's objections thereto, the District Judge referred the matter to the undersigned Magistrate Judge for the limited purpose of discovering information regarding the possibility that Brauner may have filed for state court post-conviction relief prior to the calculated expiration of the federal filing period.¹

In doing so, the Court referenced "circumstantial evidence" of this possibility in a copy of a typed letter from Brauner to the Orleans Parish Criminal District Court dated July 17, 2005.² The Court voiced its concern because of the parties' assertion that portions of Brauner's trial court record may have been lost as a result of Hurricane Katrina in 2005. Unlike the evidence of Brauner's other lost filings in 2008 and 2010, which included his multiple letters of inquiry and duplicate copies, as outlined in the Report and Recommendation, the information related to the possibility of a filing in 2004 or 2005 was presented to the District Judge for the first time as an attachment to Brauner's supplemental objections.

¹Rec. Doc. No. 22.

²Rec. Doc. No. 21, p. 7.

For the Court to comply with the District Judge's directive, Brauner must provide a more definitive date or time period for the mailing and filing of a post-conviction application in 2004 or 2005. The State will also provide any of the information that may be in its possession or obtainable from prison officials and records. Accordingly,

IT IS ORDERED that, on or before **May 6, 2015**, the petitioner, **Francis Brauner**, **SHALL** provide the Court with the following information:

- (1) A copy of any mail logs, receipts, or indigent mail requests from Dixon Correctional Institute which establish the date on which the July 17, 2005, letter was mailed to the Orleans Parish Criminal District Court;
- (2) A copy of the application for post-conviction relief mailed to the Orleans Parish Criminal District Court in 2004 or 2005;
- (3) The date or approximate date on which an application for post-conviction relief was mailed to the Orleans Parish Criminal District Court in 2004 or 2005;
- (4) The name of the jail or prison from which Brauner mailed the application for post-conviction relief to the Orleans Parish Criminal District Court in 2004 or 2005; and
- (5) A copy of any mail logs, receipts, or indigent mail requests from the jail or prison in which Brauner was housed which would establish the date on which he mailed an application for post-conviction relief to the Orleans Parish Criminal District Court in 2004 or 2005.

IT IS FURTHER ORDERED that, on or before **May 6, 2015**, the State through counsel of record **SHALL** provide any of the foregoing information that may be in its possession or obtainable from prison officials and records or file written notice of the inability to do so.

New Orleans, Louisiana, this 22nd day of April, 2015.



KAREN WELLS ROBY
UNITED STATES MAGISTRATE JUDGE