

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

VIRGIL SMITH

CIVIL ACTION

VERSUS

NO. 20-2835

DARREL VANNOY

SECTION: "J"(1)

**ORDER & REASONS**

On October 28, 2020, Plaintiff filed a Petition for Writ of Habeas Corpus, which was referred to the Magistrate Judge to conduct a hearing pursuant to 28 U.S.C. § 636(b)(1)(B)-(C). The Magistrate Judge issued Report and Recommendation that recommended that this Court dismiss Plaintiff's petition with prejudice. (Rec. Doc. 24). Pursuant to the Report and Recommendation, Defendant had fourteen days upon receipt to respond or object. Seeing no objection docketed in this case, this Court adopted the Report and Recommendations, and Plaintiff's case was dismissed. (Rec. Docs. 25, 27).

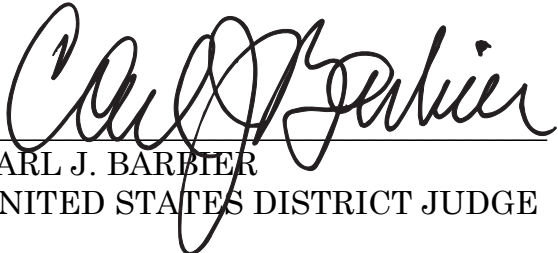
However, Plaintiff had filed a timely Motion for Extension of Time – but under the wrong docket number. Plaintiff received the Report and Recommendation on or about February 4 or 5, 2022 and mailed his Motion for an extension of time to object by February 13 or 14, 2022. (Rec. Doc. 28, at 2). Because the Motion had the incorrect case number in the caption, the Motion was docketed in case #19-839. The Motion requested an additional ten days to file a response to the Report and Recommendation. Ex Parte/Consent Motion for Extension of Time, Feb. 21, 2022, ECF No. 25.

The Court found Plaintiff's argument persuasive. On April 1, 2022, the Court vacated its previous Order and Judgment adopting the Report and Recommendation, and Plaintiff was granted an additional fourteen days to respond to the Report and Recommendation after being served with a copy of this Order. (Rec. Docs. 25, 27). Notice of the Order was mailed to Plaintiff on April 1, 2022. As of this time, the Court has yet to receive a response.

The Court, having considered the petition (Rec. Doc. 3), the record, the applicable law, the Report and Recommendation of the United States Magistrate Judge (Rec. Doc. 24), and the failure of any party to file an objection to the Magistrate Judge's Report and Recommendation, once more approves the Report and Recommendation of the United States Magistrate Judge and adopts it as its opinion in this matter. Accordingly,

**IT IS HEREBY ORDERED** that Virgil Smith's petition for issuance of a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 be **DENIED** and **DISMISSED WITH PREJUDICE**.

New Orleans, Louisiana, this 7th day of June, 2022.

  
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CARL J. BARBIER  
UNITED STATES DISTRICT JUDGE