

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CARLWYNN J. TURNER

CIVIL ACTION

VERSUS

N. BURL CAIN, ET AL.

NO. 12-00598-BAJ-EWD

RULING

Before the Court is a *Motion for Summary Judgment* filed by Defendants, Burl N. Cain, former warden of the Louisiana State Penitentiary and deputy warden Leslie DuPont (collectively “Defendants”).¹ Plaintiff, Carlwynn J. Turner, has filed an *Opposition* to the *Motion*, to which the Defendants filed a *Reply*.² Also before the Court are Plaintiff’s *Motion to Strike Successive Motion for Summary Judgment* and Plaintiff’s *Motion to Strike Untimely Raised Defense*.³ Both *Motions* are opposed.⁴

The United States Magistrate Judge issued a *Report and Recommendation* dated February 28, 2018 recommending that the Defendants’ *Motion for Summary Judgment* be denied.⁵ Defendants timely filed *Objections to the Magistrate Judge’s Report and Recommendation*⁶ regarding their *Motion for Summary Judgment* solely as to the issue of prescription.⁷

¹ Doc. 85.

² Doc. 90 and Doc. 97. Plaintiff also filed a *Surreply* to the Defendants’ *Reply*. Doc. 101.

³ Doc. 89 and 102.

⁴ Doc. 94 and Doc. 103.

⁵ Doc. 108.

⁶ Doc. 109. Defendants object to the legal standard applied by the Magistrate Judge regarding prescription. Defendants further contend that the Plaintiff failed to prove that the filing of his petition for judicial review interrupted the one-year prescriptive period.

⁷ Doc. 97. Defendants raised the issue of prescription for the first time in their *Reply* brief. Doc. 97, pp. 10-12. Notably, the issues raised regarding prescription in the Defendants’ *Objections to the*

Also in her *Report and Recommendations*, the Magistrate Judge recommended that the Plaintiff's *Motion to Strike Successive Motion for Summary Judgment* and *Motion to Strike Untimely Raised Defense* also be denied.⁸ No timely objections to the *Report and Recommendation* as to these *Motions* have been filed.

Having carefully considered the *Motions*, the record, the applicable law, the *Report and Recommendation*, and the Defendants' *Objections* to the Magistrate Judge's *Report and Recommendation*, the Court hereby approves the Magistrate Judge's *Report and Recommendation* and adopts it as the Court's opinion herein.⁹

Accordingly, **IT IS HEREBY ORDERED** that Defendants' *Motion for Summary Judgment* is hereby **DENIED** with prejudice on all grounds, except on the issue of prescription.¹⁰ The Court hereby grants Defendants thirty (30) days from the date of this *Ruling* to reurge a motion for summary judgment limited to the issue of prescription. If such a motion is filed by Defendants, then Plaintiff shall have 21 days from the date said motion is filed to respond.

Magistrate Judge's Report and Recommendation were never argued in their *Reply* brief in support of their *Motion for Summary Judgment*. In other words, the Magistrate Judge never had the opportunity to consider the merit of the Defendants' prescription arguments that were raised for the first time in their *Objections* to the *Report and Recommendation*.

⁸ Doc. 108.

⁹ Doc. 108.

¹⁰ Doc. 85.

IT IS FURTHER ORDERED that Plaintiff's *Motion to Strike Successive Motion for Summary Judgment* and Plaintiff's *Motion to Strike Untimely Raised Defense* are hereby **DENIED**.¹¹

Signed in Baton Rouge, Louisiana, on March 29, 2018.



**CHIEF JUDGE BRIAN A. JACKSON
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

¹¹ Doc. 89 and Doc. 102.