

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

HENNESSY CHRISTOF (#595808)

CIVIL ACTION

VERSUS

NO. 18-145-SDD-EWD

DARREL VANNOY, ET AL.

RULING

This matter comes before the Court on two Motions for Default and Summary Judgment¹ filed by the *pro se* Petitioner, Hennessy Christof. In Petitioner's Motions, he prays for judgment in his favor for the sole reason that the State of Louisiana failed to file a timely response to Petitioner's application for writ of habeas corpus. Petitioner has also filed an Objection² to the Magistrate Judge's Order,³ which provided Respondent with an opportunity to comply with the Court's earlier Order⁴ requiring an answer and memorandum of authorities.

This matter arises from a Petition for Writ of Habeas Corpus filed by Petitioner pursuant to 28 U.S.C. § 2254 on February 9, 2018.⁵ After the filing of the Petition and pursuant to Order dated March 29, 2018, this Court directed the State of Louisiana to file an answer and

¹ R. Docs. 15 & 17. Though titled "Motions for Default and Summary Judgment," each motion is in substance only a motion for default judgment as each Motion requests judgment based upon the sole fact that Respondent failed to timely file an answer.

² R. Doc. 14.

³ R. Doc. 11.

⁴ R. Doc. 8.

⁵ R. Doc. 1.

memorandum of authorities, along with copies of all briefs and memoranda.⁶ On October 4, 2018, this Court ordered the State of Louisiana to show cause why the State had not complied with this Court's March 29, 2018 Order.⁷ This Court further advised that, in lieu of a showing of cause, Respondent could elect to comply in full with the Court's Order of March 28, 2018.⁸ Petitioner objected to this Court's later Order on the grounds that Respondent was "eight (8) months delinquent complying with thirty (30) day Order of this Court."⁹ Petitioner requested this Court to Order the District Attorney to comply within twenty-one days or "default and issue Summary Judgment in favor of Petitioner."¹⁰

The Rules Governing Section 2254 Cases in the United States District Courts (Habeas Rules) do not contemplate default motions. Although Rule 12 of those rules permits the Court to apply the Federal Rules of Civil Procedure when appropriate, the Fifth Circuit has expressly found that "[d]efault judgments are not appropriate in habeas corpus cases," and that a habeas petitioner is not entitled to release because of an untimely answer by the state.¹¹ Because this is a habeas proceeding arising under Section 2254, default judgment would not be appropriate. Further, the State has now filed an answer and memorandum in opposition to petition for writ of habeas corpus curing the defect that gave rise to the filing of Petitioner's Motions for Default. For these same reasons, Petitioner's Objection¹² to the Magistrate Judge's Order, which provided the State with additional time to file an answer and memorandum, shall be overruled. Accordingly,

⁶ R. Doc. 8.

⁷ R. Doc. 11.

⁸ R. Doc. 11.

⁹ R. Doc. 14.

¹⁰ R. Doc. 14.

¹¹ *Lemons v. Collins*, 992 F.2d 326, at * 1 (5th Cir.1993) (table); see also *Miller v. Quarterman*, No. 1:06cv560, 2008 WL 4114930, at * 1 (E.D. Tex. Sept. 2, 2008); *Mitchell v. Quarterman*, No. C-08-52, 2008 WL 3001636, at * 1 (S.D. Tex. Aug. 1, 2008).

¹² R. Doc. 14.

IT IS ORDERED that Petitioner's Motions for Default and Summary Judgment¹³ are hereby **DENIED**.

IT IS FURTHER ORDERED that Petitioner's Objection to a Magistrate Judge's Order¹⁴ is **OVERRULED**.

Signed in Baton Rouge, Louisiana the 3 day of ~~May~~ June, 2019.



CHIEF JUDGE SHELLY D. DICK
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

¹³ R. Docs. 15 & 17.

¹⁴ R. Doc. 14.