

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

HAROLD JOE BLACK

CIVIL ACTION NO. 09-809-P

VERSUS

JUDGE S. MAURICE HICKS, JR.

WARDEN

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER

Before the Court is a Magistrate Appeal (Record Document 19) filed by pro se petitioner Harold Joe Black (“Petitioner”). Petitioner appealed Magistrate Judge Hornsby’s Memorandum Order (Record Document 16), which directed him to submit (1) a restated and amended petition; (2) a copy of the legal memorandum he filed at each level of the state court, including the date it was filed, and the responses he received from each state court; and (3) a response setting forth allegations which demonstrate that his petition is timely under 28 U.S.C. § 2244(d)(1). Petitioner also appealed Magistrate Judge Hornsby’s Order (Record Document 17), which denied motions to amend and a motion to transfer pleadings.

The aforementioned decisions by Magistrate Judge Hornsby related to non-dispositive matters. These actions are not listed in 28 U.S.C. § 636(b)(1)(A) as dispositive motions (often referred to as the “excepted motions”) that a magistrate judge may not conclusively decide. Magistrate Judge Hornsby’s orders were not recommendations to the district court; rather, they are orders from a magistrate judge on non-dispositive matters that require the district court to uphold the ruling unless it is clearly erroneous or contrary to law. See 28 U.S.C. § 636(b)(1)(A); see also Castillo v. Frank, 70 F.3d 382, 385 (5th Cir. 1995); Perales v. Casillas, 950 F.2d 1066, 1070 (5th Cir.1992). This Court will review Magistrate Judge Hornsby’s legal conclusions de novo, and will

review his factual findings for clear error. See Choate v. State Farm Lloyds, No. 03-CV-2111, 2005 WL 1109432, *1 (N.D.Tex. May 5, 2005).

The undersigned has reviewed the record and finds that Magistrate Judge Hornsby's orders of July 22, 2010 (Record Documents 16 and 17) were neither clearly erroneous nor contrary to law. This Court agrees with Magistrate Judge Hornsby's finding that "Petitioner has filed numerous, vague and confusing declarations and amendments," thus prohibiting the Court from determining "which claims Petitioner is seeking to pursue" in his habeas action. Record Document 16 at 2. The Magistrate Judge then clearly outlined the law governing federal habeas corpus relief and allowed Petitioner thirty days to file a restated and amended petition. See id. at 2-5. Likewise, the Court permitted Petitioner additional time to establish that he had exhausted state court remedies and that his petition was timely. See id. All of these directives are supported factually by the record and are grounded in well established federal law governing habeas corpus relief.

Accordingly,

IT IS ORDERED that Petitioner's Magistrate Appeal (Record Document 19) be and is hereby **DENIED**. If not already done so, Petitioner shall comply with the terms of Magistrate Judge Hornsby's Memorandum Order of July 22, 2010 (Record Document 16) no later than **February 4, 2011**. As stated in that order, failure to comply with this order or failure to keep the court apprised of an address change will result in dismissal of this petition pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and Rule 41.3W of the Uniform Local Rules for the District Courts of Louisiana.

THUS DONE AND SIGNED, in Shreveport, Louisiana, this 4th day of January, 2011.



S. MAURICE HICKS, JR.
UNITED STATES DISTRICT JUDGE