

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
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UNITED STATES DISTRICT COURT

APR - 1 2013

FOR THE WESTERN DISTRICT OF LOUISIANA

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SHREVEPORT DIVISION

FREDDIE R. LEWIS

CIVIL ACTION NO. 11-0469
JUDGE TOM STAGG

versus

WARDEN, WINN CORRECTIONAL
CENTER

MEMORANDUM ORDER

Before the court is Freddie Lewis's ("Lewis") appeal of Magistrate Judge Mark Hornsby's order (Record Document 24) denying Lewis's motion for order to compel (Record Document 23). Based on the following, Magistrate Hornsby's ruling is **AFFIRMED.**

On March 15, 2013, Lewis filed a motion seeking an order that the District Attorney be served with his Section 2254 petition so that the case may proceed. See Record Document 23. Magistrate Hornsby denied the motion, and Lewis timely appealed to this court. See Record Documents 24 and 25.

Any party may appeal a magistrate judge's ruling on a non-dispositive matter to a district court judge under Rule 72(a) of the Federal Rules of Civil Procedure and Local Rule 74.1. On appeal, the district judge may "set aside any portion of the order

that is clearly erroneous or contrary to the law.” Fed. R. Civ. Proc. 72(a). The decision by Magistrate Judge Hornsby to deny Lewis’s motion is a non-dispositive matter. This action is not listed in 28 U.S.C. § 636(b)(1)(A) as one of the dispositive motions (often referred to as the “excepted motions”) that a magistrate judge may not conclusively decide. See Maisonville v. F2 America, Inc., 902 F.2d 746, 747-748 (9th Cir. 1990), cert. denied, 498 U.S. 1025, 111 S. Ct. 674 (1991) (“[S]ection 636(b)(1)(A) lists those motions which may not be determined by a magistrate. Accordingly, any motion not listed, nor analogous to a motion listed in this category, falls within the non-dispositive group of matters which a magistrate may determine”). The magistrate judge’s March 19, 2013, ruling is not a recommendation to the district court, which normally requires de novo review under Rule 72. Rather, it is an order from the magistrate judge on a non-dispositive matter that requires 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).

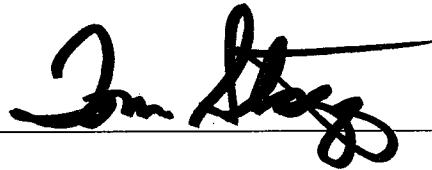
The order issued by Magistrate Judge Hornsby denying Lewis’s motion laid out why service of the petition is premature. See Record Document 24. Lewis’s petition is lengthy (over 65 pages), supported by hundreds of pages of exhibits, and is otherwise complex. See id. Further screening is necessary to “determine whether additional information is needed, timeliness or procedural bar objections exist, or

whether service is appropriate.” Id. Moreover, some of the delay is attributable to the fact that the case had to be transferred from the Eastern District of Louisiana. See id.

Magistrate Judge Hornsby’s ruling is not clearly erroneous or contrary to law. The court concurs with the magistrate’s determination that additional time is needed to review Lewis’s submissions, given that they are exceptionally lengthy and complex.

Accordingly, Magistrate Judge Hornsby’s order (Record Document 24) is **AFFIRMED.**

THUS DONE AND SIGNED at Shreveport, Louisiana this the 28th day of March, 2013.

A handwritten signature in black ink, appearing to read "Tom Stagg", written over a horizontal line.

JUDGE TOM STAGG