

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

FREDRICK WAYNE HARRIS

CIVIL ACTION NO.16-0233-P

VERSUS

JUDGE S. MAURICE HICKS, JR.

WARDEN JERRY GOODWIN

MAGISTRATE JUDGE HORNSBY

**MEMORANDUM ORDER**

Before the Court is a Magistrate Appeal (Record Document 12) filed by Petitioner Fredrick Wayne Harris (“Harris”). Harris is appealing Magistrate Judge Hornsby’s June 22, 2016 Order (Record Document 11), which provided:

Petitioner, a state prisoner, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has previously filed an application for writ of habeas corpus attacking the convictions and sentences challenged herein. The prior application, No. 08-2004, was denied on the merits on November 22, 2011.

Before Petitioner can proceed with the instant application, he must move in the United States Court of Appeals for the Fifth Circuit for an order authorizing the district court to consider the application. 28 U.S.C. §2244(b)(3).

Accordingly;

**IT IS HEREBY ORDERED** that this action is stayed for a period of sixty (60) days. Petitioner’s failure to obtain authorization within that time from the United States Court of Appeals for the Fifth Circuit to proceed with this action will result in this petition being stricken from the record.

Record Document 11. Harris argues he should be permitted to file the instant application because he is raising a jurisdictional issue, asking “Am I not allowed to file more than one § 2254?” Record Document 12 at 2.

The decision by a magistrate judge as to discovery issues 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. Magistrate Judge Hornsby’s Order is not a recommendation to the district court; 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); 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 the Magistrate Judge’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 Court has afforded the matter de novo review and finds that Magistrate Judge Hornsby’s Order of June 22, 2016 (Record Document 11) was correct. Harris filed a previous § 2254 habeas corpus petition, which was denied on the merits on November 22, 2011. See Record Document 44 in Civil Action No. 08-2004. When one such petition has already been filed, a petitioner is required to seek a certificate from the Fifth Circuit to proceed with another § 2254 petition. See 28 U.S.C. § 2244(b)(3). Therefore, this Court agrees with the Magistrate Judge’s conclusion that before Petitioner can proceed with the instant application, he must move in the United States Court of Appeals for the Fifth Circuit for an order authorizing the district court to consider the present application. See id. Thus, the sixty (60) day stay period entered was neither clearly erroneous nor contrary to law.

Accordingly,

**IT IS ORDERED** that Petitioner's Magistrate Appeal (Record Document 12) be and is hereby **DENIED** and Magistrate Judge Hornsby's Order of June 22, 2016 is **AFFIRMED**.

**THUS DONE AND SIGNED**, in Shreveport, Louisiana, this 4th day of October, 2016.

  
\_\_\_\_\_  
S. MAURICE HICKS, JR.  
UNITED STATES DISTRICT JUDGE