

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

REX CUNNINGHAM,)	
Petitioner)	
)	
	v.)	C.A. NO. 10-cv-30076-MAP
)	
J. GRONDOLSKY, ET AL.,)	
Respondents)	
REX CUNNINGHAM,)	
Petitioner)	
)	
	v.)	C.A. NO. 10-cv-30077MAP
)	
JEFFREY GRONDOLSKY,)	
Respondent)	

MEMORANDUM AND ORDER RE:
REPORT AND RECOMMENDATION WITH REGARD TO
RESPONDENT'S MOTIONS TO DISMISS PETITION
(Docket Nos. 4 & 5 in 10-cv-30077)
(Docket Nos. 6 & 7 in 10-cv-30076)

October 28, 2010

PONSOR, D.J.

Petitioner Rex Cunningham, a federal inmate, seeks relief pursuant to 28 U.S.C. § 2241 in these parallel civil actions. Respondents filed what have been construed as Motions to Dismiss in both cases and these were referred to Magistrate Judge Kenneth P. Neiman for a report and recommendation. Judge Neiman issued orders on July 28, 2010 requiring Petitioner to oppose Respondents' Motions to Dismiss. No response was filed by Petitioner.

On September 16, 2010, Magistrate Judge Neiman issued

his Report and Recommendation in both cases, to the effect that Respondents' Motions to Dismiss should be allowed. Despite lack of compliance with Judge Neiman's order, Petitioner on September 29, 2010 filed an objection and requested a stay of all proceedings. See C.A. 10-30076-MAP, Dkt. No. 8. The objection offered the contentions that Petitioner has "always maintained" that he is actually innocent, that he has moved several times during the duration of this matter, and that he has had only limited ability to access legal materials, a law library, and other resources. In conclusion, Petitioner asked that all proceedings be stayed until he is released from the Bureau of Prisons.

Upon de novo review, the court hereby ADOPTS the Report and Recommendation of Magistrate Judge Kenneth P. Neiman dated September 16, 2006. Respondents' Motions to Dismiss (as so construed by Judge Neiman) will be allowed. The relief sought by Petitioner by invoking the habeas corpus statute, 28 U.S.C. § 2241, is release from confinement. To stay proceedings in these cases until Petitioner is in fact released (which he states will be relatively soon) would have the ironic effect of postponing action on the case until Petitioner has already obtained the relief this litigation is seeking.

Under these circumstances, the Motions to Dismiss in 10-cv-30076 (Dkt. No. 6) and 10-cv-30077 (Dkt. No. 4) are hereby ALLOWED. The clerk will enter judgment for Respondents in both cases. These cases may now be closed.

It is So Ordered.

/s/ Michael A. Ponsor
MICHAEL A. PONSOR
U. S. District Judge