

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT VAN CLEAVE,

Petitioner,

Civil Action No.
07-CV-11899

vs.

JEFF WHITE,

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Respondent.
_____ /

ORDER

(1) GRANTING PETITIONER'S MOTION FOR RECONSIDERATION,
(2) VACATING THE COURT'S DECEMBER 29, 2009, ORDER AND
ACCOMPANYING JUDGMENT,
and
(3) ACCEPTING PETITIONER'S UNTIMELY OBJECTIONS

This is a habeas corpus case. On December 7, 2009, Magistrate Judge Magistrate Judge Paul J. Komives issued an Report and Recommendation (“R&R”) in which he recommended that Petitioner’s Application for Writ of Habeas Corpus be denied. No objections were filed. On December 29, 2009, after the expiration of the deadline for objections, the Court issued an order accepting and adopting the R&R and entering judgment against Petitioner.

On January 8, 2010, Petitioner, who is represented by counsel, filed an “emergency motion to vacate judgment” in which he stated, in pertinent part, that “Petitioner through excusable oversight failed to timely tender objections to the [R&R]” because “[c]ounsel was not aware that Magistrate Judge Komives had filed a [R&R] in this matter until Counsel discovered that [the Court] had entered . . . judgment.”

On January 26, 2010, the Court issued an order denying Petitioner's "emergency motion to vacate," stating, in part, that "[b]ecause Petitioner has failed to file timely objections the R&R in accordance with Fed. R. Civ. P. 72(b), Petitioner's 'Emergency Motion to Vacate Judgment' is denied."

On February 8, 2010, Petitioner filed a Motion for Rehearing/Reconsideration of the Court's January 26, 2010, ordering denying the emergency motion. In this motion, Petitioner states, in pertinent part, as follows:

4. Petitioner's delay in filing the aforesaid objections to the magistrate's report and recommendation was not because Petitioner had abandoned all remaining efforts in seeking relief before from his conviction and sentence, but rather was due to a simple oversight in noticing on the Pacer website that Magistrate Paul Komives had issued his report and recommendation.
5. Petitioner Mr. Van Cleave has been patiently awaiting a decision on his habeas petition for nearly three (3) years and Counsel would respectfully suggest that it is inequitable in not allowing the filing of Petitioner's objections to the magistrate's report and recommendation in light of the fact that they were filed only one (1) month after they were due. Certainly, had Petitioner been aware of the filing of the magistrate's report and recommendation, then the same would have been timely filed. Counsel respectfully suggests that this Honorable Court failed to consider the inequitable situation in awaiting nearly three (3) years for a decision on petitioner's habeas petition and the minimal delay in the filing of the objections. Therefore, Petitioner urges this Honorable Court to reconsider its position in denying Petitioner's motion to vacate this Court's December 29, 2009 judgment and order.

Having considered Petitioner's arguments, and in the interest of justice, the Court will grant Petitioner's Motion for Rehearing/Reconsideration and accept his untimely objections to the Magistrate Judge's R&R. The Court will issue an appropriate order forthwith. There will not be any oral argument.

SO ORDERED.

S/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: March 11, 2010

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on March 11, 2010.

S/Denise Goodine
Case Manager