

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TOMMIE SEYMORE,

PETITIONER,

CASE NO. 2:07-CV-15166
HON. GEORGE CARAM STEEH

v.

MILLICENT WARREN,

RESPONDENT.

_____ /

ORDER ACCEPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

This case involves petitioner Tommie Seymore's application for the writ of habeas corpus. On October 16, 2008, Magistrate Judge Komives issued a report and recommendation recommending that respondent's motion to dismiss be granted for failure to comply with the one year statute of limitations. The court adopted the report and recommendation and dismissed the petition on January 20, 2009. On February 5, 2009, petitioner filed a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(4), on the grounds that the judgment is void, and 60(b)(6), which allows relief on the basis of "any other reason that justifies relief." On August 6, 2009, Magistrate Judge Komives issued a report and recommendation recommending that the court deny the petitioner's motion for relief from judgment. The petitioner filed objections to Magistrate Judge Komives' report and recommendation on the grounds that the state court ruling was void under 60(b)(4). In addition, petitioner argues that relief from judgment is proper under 60(b)(6) based upon allegations that the Court

failed to review the entire record, which the petitioner alleges demonstrates extraordinary circumstances. The court has reviewed the Magistrate Judge's report and recommendation and the objections, and accepts the Magistrate Judge's recommendation.

A judge of the court has authority to "accept, reject, modify, in whole or in part, the findings or recommendations made by the magistrate judge," but "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C).

In the report and recommendation, Magistrate Judge Komives explained that Rule 60(b)(4) requires that the petitioner demonstrate that the judgment that petitioner is seeking relief from is void. Since petitioner only alleges that the state court decision is void, but does not allege that this court's decision is void, Magistrate Judge Komives recommended that the court deny relief from judgment. Magistrate Judge Komives stated that relief pursuant to Rule 60(b)(6) should be granted "only in unusual and extreme situations." Magistrate Judge Komives recommended that petitioner's requested relief be denied because petitioner has not demonstrated that any unusual or extreme situations exist in this case. Magistrate Judge Komives properly concluded that there was no proper basis for relief from judgment and the petitioner's objections are without merit. Accordingly,

IT IS ORDERED that Magistrate Judge Komives' report and recommendation is accepted as the findings and conclusions of this court. IT IS FURTHER ORDERED

that respondent's motion for relief from judgment (Doc. 18) hereby is DENIED.

Dated: August 31, 2009

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on August 31, 2009, by electronic and/or ordinary mail.

s/Josephine Chaffee
Deputy Clerk