IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

QUINCEY M. FOX

vs. **CIVIL ACTION No. 3:18-CV-391-HTW-JCG**

PELICIA HALL

ORDER ADOPTING REPORT AND RECOMMENDATION

BEFORE THIS COURT is the Report and Recommendation of the United States Magistrate Judge John C. Gargiulo **[Docket no. 13]**. Respondent Pelicia Hall, Commissioner of the Mississippi Department of Corrections, had filed a Motion to Dismiss or, in the Alternative, for Failure to Exhaust **[Docket no. 7].** Fox did not respond to the Motion to Dismiss. The Magistrate Judge issued an Order to Show Cause **[Docket no. 9]** on November 1, 2018, requiring Fox to respond. Fox, instead of filing a response to the motion, filed an Amended Complaint, without leave of court**.**

In his Report and Recommendation, filed on January 31, 2019, Magistrate Judge Gargiulo found that the petition is time barred and procedurally defaulted. The Magistrate Judge recommended that Fox's Petition for Writ of Habeas Corpus **[Docket no. 1]** be DISMISSED and the defendant's Motion to Dismiss **[Docket no. 7]** be GRANTED. Magistrate Judge Gargiulo directed the *pro se* petitioner to file any objections within fourteen (14) days. The petitioner has failed to do so.

Based upon the findings and recommendation contained in the Report and Recommendation **[Docket no. 13]**, this court finds it well-taken. Therefore, the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED** as the order of this court.

Accordingly, this order hereby grants Defendant's Motion to Dismiss and **DISMISSES** this lawsuit **WITH PREJUDICE** and orders that the parties are to bear their own costs.

A final order adverse to the petitioner having been filed in the captioned habeas corpus case, in which the detention complained of arises out of process issued by a state court or a proceeding pursuant to 28 U.S.C. § 2241, the court, considering the record in the case and the requirements of 28 U.S.C. § 2253, Rule 22(b) of the Federal Rules of Appellate Procedure, and Rule 11(a) of the Rules Governing § 2241 Cases in the United States District Courts, hereby finds that:

A Certificate of Appealability should not issue. The applicant has failed to make a substantial showing of the denial of a constitutional right.

SO ORDERED AND ADJUDGED this the 28th day of February, 2019.

s/ HENRY T. WINGATE
UNITED STATES DISTRICT COURT JUDGE

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