FRANKLIN v. NOGAN et al

## **NOT FOR PUBLICATION**

## UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

ANTHONY FRANKLIN,

Civil Action No. 15-891 (ES)

Petitioner,

: ORDER

PATRICK A. NOGAN, et al,

Respondents.

espondents.

This matter has come before the Court on a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (D.E. No. 1). It appearing that:

- 1. On March 3, 2015, this Court entered an Order directing Respondent to file an Answer to the Petition within 45 days. (D.E. No. 2).
- 2. On March 30, 2015, pursuant to a request from Respondent, the Court entered an Order extending the time to file an Answer until May 15, 2015. (D.E. No. 5).
- 3. On May 1, 2015, Petitioner filed a Motion for Default Judgment based on his mistaken belief that the deadline for filing an Answer had expired. (D.E. No. 10).
- 4. Since the deadline for filing an Answer had not yet expired at the time Petitioner filed his Motion, the Motion will be denied.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> Moreover, the Court notes that it is doubtful that a default judgment is even available in a habeas corpus proceeding. See Lemons v. O'Sullivan, 54 F.3d 357, 364 (7th Cir. 1995) (explaining that a default judgment is a "disproportionate sanction" that "is disfavored in habeas corpus cases"); Gordon v. Duran, 895 F.2d 610, 612 (9th Cir. 1990) ("The failure to respond to claims raised in a petition for habeas corpus does not entitle the petitioner to a default judgment."); Aziz v. Leferve, 830 F.2d 184, 187 (11th Cir. 1987) ("[A] default judgment is not contemplated in habeas corpus

	N	
IT IS THEREFORE, on this _	13 day of may	2015,

ORDERED that Petitioner's Motion for Default Judgment, (D.E. No. 10), is DENIED.

Esther Salas, U.S.D.J.

cases . . . "); Allen v. Perini, 424 F.2d 134, 138 (6th Cir. 1970) ("Rule 55(a) has no application in habeas corpus cases . . . "). Even if a default judgment is available in habeas corpus proceedings, Petitioner is not entitled to such a sanction, as explained above.