

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Dawan Chatman #172972,)	C.A. No. 4:09-2234-PMD-TER
)	
Petitioner,)	
)	
vs.)	
)	<u>ORDER</u>
Warden Michael McCall,)	
)	
Respondent.)	
_____)	

On February 26, 2010, Magistrate Judge Thomas E. Rogers, III issued a Report and Recommendation recommending that petitioner’s case be dismissed for lack of prosecution. On March 11, 2010, petitioner filed a Motion for Enlargement of Time to respond to the pending summary judgment motion. On March 15, 2010, this court issued an Order granting petitioner’s motion for an extension of time to respond to respondent’s motion for summary judgment. Petitioner was allowed up to and including April 8, 2010, to file a response to respondent’s motion for summary judgment. Upon the filing of petitioner’s response to said motion, the Report and Recommendation was to be vacated and the matter remanded to Magistrate Judge Rogers for further consideration. However, if petitioner failed to file his response to the motion for summary judgment in the time outlined above, the case was to be dismissed for lack of prosecution.

On April 12, 2010, an Order was issued adopting the Report and Recommendation and dismissing the petition for failure to prosecute because no response to the summary judgment motion had been filed by petitioner. On that same date, the Clerk of Court received and filed petitioner’s response to the motion for summary judgment. It appears from a review of the file and petitioner’s response that said response was timely, as it was due on April 8, 2010, and pursuant to a stamp on

the envelope, it was received at the PCI Mailroom on April 7, 2010. However, the response was not received in the Clerk of Court's office until April 12, 2010. Now therefore,

IT IS HEREWITH ORDERED that this court's Order filed on April 12, 2010, dismissing the petition for failure to prosecute and the judgment filed on the same date, as well as the Report and Recommendation, are herewith vacated, and this matter is herewith remanded to Magistrate Judge Thomas E. Rogers, III for further consideration .

AND IT IS SO ORDERED.



PATRICK MICHAEL DUFFY
United States District Judge

April 23, 2010
Charleston, South Carolina