

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Martin Delgado-Almazan, #76009-004,)
)
Petitioner,)
)
vs.)
)
Mary M. Mitchell, Warden and Custodian,)
)
Respondent.)
_____)

Civil Action No.: 4:09-2592-TLW-TER

ORDER

Petitioner, Martin Delgado-Almazan (“petitioner”), brought this action for habeas relief, *pro se*, pursuant to 28 U.S.C. § 2241 on October 6, 2009. (Doc. #1).

This matter now comes before this Court for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Thomas E. Rogers, III to whom this case had previously been assigned. (Doc. #13). In the Report, the Magistrate Judge recommends that the petition in this case be dismissed without prejudice and without requiring the respondent to file a return. (Doc. #13). The petitioner filed objections to the report. (Doc. #15). In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections...The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992)

(citations omitted).

In the objections, the petitioner notes that he did not consent to have his petition referred to a United States Magistrate Judge, and therefore objects to the Report in total. The Court notes that pursuant to South Carolina District Court Local Rule 73.02(B)(2)(c), all pretrial proceedings in applications for post-conviction review under 28 U.S.C. § 2241 are automatically referred to a United States Magistrate Judge. Thus, the petitioner's consent was not required for the pretrial proceedings in this case to be referred to a United States Magistrate Judge. The petitioner also asserts that the Magistrate Judge should be held in default for failing to respond to the habeas petition within thirty days. However, the Court notes that default judgment and the response times set forth in the Federal Rules of Civil Procedure apply to litigants rather than the Court.

In light of the standard set forth in Wallace, the Court has reviewed, de novo, the Report and the objections. After careful review of the Report and objections thereto, the Court **ACCEPTS** the Report. (Doc. #13). Therefore, for the reasons articulated by the Magistrate Judge, it is hereby **ORDERED** that the habeas petition in this action is dismissed without prejudice and without requiring the respondent to file a return.

IT IS SO ORDERED.

s/Terry L. Wooten
United States District Judge

July 9, 2010
Florence, South Carolina