

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

2017 JUL 24 A 9:35

SUPREME ACKBAR,

DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
Clerk's Office

Petitioner,

v.

WARDEN MCFADDEN

Respondent.

ORDER and OPINION

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This matter is before the Court on Plaintiff's Motion (Dkt. No. 58) to Alter or Amend this Court's Order (Dkt. No. 55) adopting the Magistrate's Report and Recommendation ("R&R") (Dkt. No. 49) and denying Plaintiff's Motion for Default Judgment. For the reasons below, Plaintiff's Motion to Alter or Amend this Court's Order (Dkt. No. 58) is denied.

I. Background

The Magistrate issued an R&R on June 22, 2017 (Dkt. No. 49) recommending that this Court deny Plaintiff's Motion for Default Judgment.¹ The R&R recommended that the motion be denied because default judgments are generally disfavored in habeas actions. *See, e.g., Aziz v. Leferve*, 830 F.2d 184, 187 (11th Cir.1987) (noting that "a default judgment is not contemplated in habeas corpus cases"). Further, a default judgment would be inappropriate in this case because the Defendant did not default. Defendant's Return was originally due to be filed by May 2, 2017.

¹ Plaintiff titled his motion "Petitioner's Motion to Alter or Amend." (Doc. No. 44). However, the motion is being treated as a Motion for Default Judgment because he requests a default judgment.

(Dkt. No. 20). On May 2, 2017, Defendant filed a motion for an extension of time. (Dkt. No. 20). The Magistrate granted the extension, giving Defendant up to and including June 1, 2017, to file the Return. (Dkt. No. 29). On June 1, 2017, Defendant filed a motion for a one-day extension to file the Return. (Dkt. No. 37). This motion for a one-day extension was granted on June 1, 2017, giving Defendant up to and including June 2, 2017, to file the Return. (Dkt. No. 38). Defendant filed the Return and Memorandum on June 2, 2017. (Dkt. No 40).

II. Legal Standard

a. Motion to Alter or Amend a Judgement

Rule 59(e) of the Federal Rules of Civil Procedure governs Motions to Alter or Amend a Judgment, but the Rule does not provide a standard for such motions. The Fourth Circuit provides “three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998). “Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance.” *Id.* at 403 (citations omitted). Rule 59(e) provides an “extraordinary remedy that should be used sparingly.” *Id.* (citation omitted).

III. Discussion

Plaintiff argues that the Magistrate showed “improper favoritism” by granting Defendant’s motions for extensions of time and that he has been the victim of a “manifest injustice.” (Dkt. No. 58, 4-5). The Fourth Circuit has repeatedly expressed a strong preference that default judgments should be avoided so that claims and defenses are disposed of on their

merits. *Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc.*, 616 F.3d 413, 417 (4th Cir. 2010); *Tazco, Inc. v. Director, Office of Workers Compensation Program, U.S. Department of Labor*, 895 F.2d 949, 950 (4th Cir. 1990) (“The law disfavors default judgments as a general matter.”). Federal Rule of Civil Procedure 55(c) must be “liberally construed” to provide relief from the onerous consequences of defaults judgments. *Lolackly v. Arthur Murray*, 816 F.2d 951, 954 (4th Cir. 1987).

Defendant’s motions for extensions of time were made in good faith due to Defendant’s involvement with other pending matters in state and federal court. (Dkt. No. 28, 37). This court has the authority to grant extensions under such circumstances. Fed. R. Civ. P. 16(b)(4) (“[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time...”). Moreover, the extensions granted in this case were modest, providing Defendant with only one additional month to file his Return.

IV. Conclusion

For the foregoing reasons, Plaintiff’s Motion to Alter or Amend the Judgment (Dkt. No. 58) is **DENIED**.

AND IT IS SO ORDERED.



Richard M. Gergel
United States District Judge

July 24, 2017
Charleston, South Carolina