

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

Robert Graham, Jr.,)
Petitioner,) C/A No. 6:10-0376-MBS-KFM
vs.)
Michael McCall, Warden, Perry C.I.,)
Respondent.)

)

ORD E R

Petitioner Robert Graham, Jr. is an inmate in custody of the South Carolina Department of Corrections. He is housed at Perry Correctional Institution in Pelzer, South Carolina. On February 17, 2010, Petitioner, proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge William M. Catoe for pretrial handling.

This matter is before the court on Petitioner's motion for default judgment and for evidentiary hearing (Entry 15), which motion was filed April 23, 2010. Respondent filed a response in opposition on May 4, 2010. On May 13, 2010, the Magistrate Judge filed an Order and Report of Magistrate Judge in which he noted that Respondent timely filed a return to Petitioner's petition on April 20, 2010. Accordingly, the Magistrate Judge recommended that Petitioner's motion for default judgment and for evidentiary hearing be denied. Petitioner filed no objections to the Report of Magistrate Judge.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo

determination of any portions of the Report of Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record and adopts the Report of Magistrate Judge. Petitioner’s motion for default judgment and for evidentiary hearing (Entry 15) is **denied**. The within action is recommitted to the Magistrate Judge for additional pretrial handling.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

June 10, 2010.