

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

Norman Tyrone Dais, #99936-071, formerly SCDC #283547)	C/A No. 8:08-3629-JFA-BHH
)	
)	
Petitioner,)	
vs.)	ORDER
)	
Melanie Huggins, Horry County Clerk of Court,)	
)	
)	
Respondent.)	
_____)	

Petitioner Norman Dais, a federal prisoner at FCI-Bennettsville proceeding *pro se*, seeks habeas corpus relief under 28 U.S.C. § 2254 by way of a petition filed October 28, 2008. Dais seeks to have this court direct the respondent, the Horry County Clerk of Court, to correct the court files in his state criminal case.

The Magistrate Judge assigned to this action¹ has prepared a comprehensive Report and Recommendation wherein he recommends that the petitioner is seeking mandamus-type relief, which does not lie against a state official, and thus the case is subject to summary dismissal.

The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

¹ The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

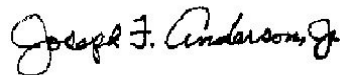
The petitioner was advised of his right to file objections to the Report and Recommendation and has done so in a one-page objection memorandum. The objection memorandum is little more than a statement that the petitioner objects to the disposition of the case as recommended by the Magistrate Judge. Such objection is overruled.

As the Magistrate Judge correctly notes in his Report, a federal district court may issue a writ of mandamus only against an employee or official of the United States. *See, e.g., Fallini v. Hodel*, 783 F.2d 1343, 1345 (9th Cir. 1986). Because the respondent is a state court official, this action has been improperly filed against her. Hence, the petitioner cannot obtain mandamus relief in this court.

After carefully reviewing the applicable law, the record in this case, the Report and Recommendation, the court finds the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law. The court, therefore, adopts the recommendation of the Magistrate Judge in full and incorporates this Report by specific reference.

Accordingly, the petition is denied and this action is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.



November 20, 2008
Columbia, South Carolina

Joseph F. Anderson, Jr.
United States District Judge