

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CHRISTOPHER D. HARVEY, #1434901 §
VS. § CIVIL ACTION NO. 4:10cv63
DIRECTOR, TDCJ-CID §

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a prisoner confined in the Texas prison system, proceeding *pro se*, filed the above-styled and numbered petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred for findings of fact, conclusions of law and recommendations for the disposition of the case.

Motion for Summary Judgment

Petitioner filed a motion for summary judgment (docket entry #33). The *Rules Governing Section 2254 Cases in the United States District Courts* provide for the orderly progression of habeas corpus proceedings. Rule 3 of the Rules Governing Section 2254 Cases in the United States District Courts provides for the filing of the petition and the payment of the filing fee. Rule 4 provides for a preliminary consideration of the petition by a court. If a petition is not dismissed at that juncture, Rule 5 then provides that an answer and state records be filed. Subject to the judge’s authorization, Rule 6 allows for discovery, Rule 7 allows for expanding the record, and Rule 8 allows for an evidentiary hearing. A motion for summary judgment is not a proper method of adjudicating a petition for a writ of habeas corpus. *See Browder v. Director, Ill. Dept. of Correction*, 434 U.S. 257, 269, n.14, 98 S. Ct. 556, 563, 54 L. Ed.2d 521 (1978); *see also United States v. Hurley*, 2005 WL 1473828 n.5 (N.D. Tex 2005) (Not Reported in F. Supp.2d) (motion for summary judgment is not proper method for adjudicating a motion pursuant to U.S.C. § 2255).

Recommendation

It is accordingly recommended that the motion for summary judgment (docket entry #33) be denied.

Within fourteen (14) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations contained in the report.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within fourteen days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

SIGNED this 23rd day of April, 2012.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE