

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

MICHAEL J. POGUE, #1239400

§

VS.

§

CIVIL ACTION NO. 4:16cv119

§

DIRECTOR, TDCJ-CID

§

§

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Don D. Bush, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be denied and dismissed without prejudice because it is a successive petition. Petitioner filed objections.

The Report of the Magistrate Judge, which contains his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct and the objections of Petitioner are without merit. In the instant case, the Magistrate Judge concluded that Petitioner's case was barred because it was successive to Cause No. 4:07cv464.

Petitioner asserts that he should be able to file a successive petition because his earlier petition was dismissed without prejudice. However, a review of the docket in Cause No. 4:07cv464 shows that the Magistrate Judge recommended that the case be dismissed with prejudice. (Dkt. #28). The Final Judgment reflects a dismissal with prejudice. (Dkt. #32). The court specifically adopted the findings and conclusions of the Magistrate Judge, but improvidently used the words, "without

prejudice,” in the Order of Dismissal. (Dkt. #31). The Court then granted the Government’s motion to alter judgment (Dkt. #34) by amending the Order of Dismissal to reflect a dismissal “with prejudice.” (Dkt. #35). Petitioner’s objections are disingenuous and without merit. The Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the court.

It is accordingly **ORDERED** that the petition for a writ of habeas corpus is **DISMISSED** without prejudice as successive.

It is further **ORDERED** that all motions not previously ruled on are hereby **DENIED**.

SIGNED this 3rd day of February, 2017.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE