

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

CHRISTOPHER S. CARSON	§	
VS.	§	CIVIL ACTION NO. 6:10cv340
HENDERSON COUNTY DISTRICT ATTORNEY, ET AL.	§	

ORDER ADOPTING REPORT AND RECOMMENDATION

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation construing Carson's civil rights lawsuit as an application for habeas corpus relief for challenging the validity of a state criminal proceeding, namely, his indictment. The Magistrate Judge then determined from Petitioner Carson's filings that his habeas claim had not been exhausted in the state court. Accordingly, she recommended that the instant action be dismissed without prejudice for Petitioner to pursue exhaustion in the proper state court. The Petitioner has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such motion, has been presented for consideration, and having made a *de novo* review of the objections raised by the Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Petitioner are without merit. In part, Petitioner renews his objections to the Magistrate Judge's earlier Report and Recommendation of July 19, 2010 (docket entry #7), on Petitioner's motion for temporary restraining order and/or preliminary injunction. He has already objected to that Report and Recommendation and such objections were overruled and his motion

denied. *See* docket entries #10, 11. Further reference to that motion is without merit. Addressing the instant Report and Recommendation, he also essentially restates his argument on the merits that Henderson County does not use a grand jury commissioner's system and explains who he is suing. However, he fails to address the point of the Report and Recommendation, that his purported civil rights lawsuit must be construed as a petition for federal habeas corpus relief, which he has not exhausted in the state courts. It is therefore

ORDERED that the Petitioner's civil rights action, properly construed as a petition for habeas corpus relief, be **DENIED** and the case is **DISMISSED** without prejudice.

So ORDERED and SIGNED this 28th day of September, 2010.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE