

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

TRAVIS CLEO STONE III §  
v. § CIVIL ACTION NO. 6:10cv462  
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Petitioner Travis Stone, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Stone was convicted of possession of chemicals with intent to manufacture a controlled substance, receiving a sentence of 32 years in prison. His conviction was affirmed by the Twelfth Judicial Court of Appeals on September 10, 2008, and discretionary review was denied by the Texas Court of Criminal Appeals on March 11, 2009. Stone also sought state habeas corpus relief which was denied by the Court of Criminal Appeals.

The Magistrate Judge ordered the Respondent to answer Stone’s petition, and the Respondent filed a motion to dismiss. This motion asserted that Stone has filed a petition for federal habeas corpus relief in the U.S. District Court for the Western District of Texas, which in part challenges the same conviction at issue in the present case. Stone v. Thaler, civil action no. 1:10cv589 (W.D.Tex.). On April 1, 2011, U.S. Magistrate Judge Robert Pitman entered a Report in that case, recommending that the petition be denied. This Report noted that Stone “attacks the

validity of his convictions and sentences in five issues in twenty-two grounds for relief,” encompassing challenges to Stone’s conviction for possession of chemicals with intent to manufacture a controlled substance as well as another conviction, for arson with bodily injury; Stone received both convictions in the same proceeding. As of June 14, 2011, Stone had not yet filed objections to Magistrate Judge Pitman’s Report, and the case was still pending in the Western District of Texas.

Stone did not file a response, in the present case, to the Respondent’s assertion that his case in the Eastern District should be dismissed as successive. After review of the pleadings, the Magistrate Judge issued a Report on May 10, 2011, recommending that the present case be dismissed as successive. The Magistrate Judge observed that Stone’s challenges to his conviction in the present case are or could have been raised in his earlier petition, which is pending in the Western District. Thus, the Magistrate Judge reasoned, the present petition is successive, and Stone has not shown that he has obtained leave from the Fifth Circuit to file a second or successive petition, as required by 28 U.S.C. §2244(b)(3). The Magistrate Judge thus concluded that the Respondent’s motion to dismiss should be granted.

A copy of this Report was sent to Stone at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED without prejudice. Stone may refile his petition at such time as he obtains leave from the Fifth Circuit Court of Appeals to file a second or successive petition. He may not refile this petition without first obtaining such leave, and the dismissal of this petition shall have no effect upon his right to seek such leave.

ORDERED that the Petitioner Matthew Smith is hereby DENIED a certificate of appealability *sua sponte*. This denial refers solely to an appeal of this case and shall have no effect upon Stone's right to seek permission to file a successive petition, nor upon his right to pursue such petition once permission is granted. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

**SIGNED this 14th day of June, 2011.**

A handwritten signature in black ink, reading "Michael H. Schneider". The signature is written in a cursive style with a large initial "M".

MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE