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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TEDDY MORRIS,

v.

ROB McKENNA,

Respondent.

Case No. C09-5345RBL

ORDER GRANTING
RESPONDENT'S
REQUEST FOR AN
EXTENSION OF TIME TO
FILE AN ANSWER

The underlying Petition for a Writ of Habeas Corpus has been referred to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and 636 (b)(1)(B), and Local Magistrate Judge's Rule MJR3 and MJR4. Petitioner is seeking federal habeas relief, pursuant to 28 U.S.C. § 2254.

Before the court is Respondent's motion for a ten-day extension to file the answer (Dkt. # 11). Counsel asks for the extension so that Respondent can obtain files from federal prison.

Petitioner opposes the extension and asks for judgment in his favor (Dkt. # 14).

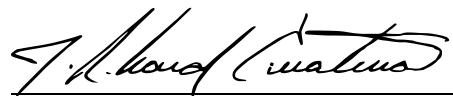
ORDER - 1

1 The Ninth Circuit has expressly declared that a habeas corpus petitioner is not entitled to
2 default judgment. Gordan v. Duran, 895 F.2d 610 (9th Cir. 1990). The habeas petitioner still
3 bears the burden of showing that he or she is in custody in violation of the constitution. Absent
4 such a showing, the petitioner is not entitled to relief. Id. See also, Bermudez v. Reid, 733 F.2d
5 18, 21 (2nd Cir.), cert. denied, 469 U.S. 874 (1984); Broussard v. Lippman, 643 F.2d 1131 (5th
6 Cir.), cert. denied, 452 U.S. 920 (1981); Goodman v. Keohane, 663 F.2d 1033, 1047 n. 4 (11th
7 Cir. 1981); Allen v. Perini, 424 F.2d 134, 138 (6th Cir.), cert. denied, 400 U.S. 906 (1970); Ruiz
8 v. Cady, 660 F.2d 337, 341 (7th Cir. 1981).

10 Respondent has shown good cause for a ten-day extension of time. Significantly, the
11 answer has now been filed, (Dkt. # 12) and is noted for consideration on September 25, 2009.
12 The motion for a ten-day extension of time is GRANTED.

13 The Clerk is directed to mail a copy of this Order to petitioner and to remove Dkt. # 11
14 from the Court's Calendar.

15 Dated this 8th day of September 2009.

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20 J. Richard Creatura
21 United States Magistrate Judge
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