[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10425
Non-Argument Calendar

D.C. Docket No. 4:17-cv-01784-LSC-JEO

TIMOTHY BURNS,
by and through h[er] father of a minor child, A.B.,

Petitioner - Appellant.

versus

STATE OF ALABAMA,

Respondent - Appellee.

Appeal from the United States District Court
for the Northern District of Alabama

(January 11, 2019)

Before WILLIAM PRYOR, BRANCH, and GRANT, Circuit Judges.

PER CURIAM.

Timothy Burns filed in the United States District Court for the Northern District of Alabama a document titled "A Writ Of Habeas Corpus." Burns accused a

state court judge of violating his rights under the Fifth and Fourteenth Amendments of the United States Constitution and Title VII of the Civil Rights Act of 1974. But Burns was not a prisoner. Burns's adult daughter had filed a dependency petition alleging that Burns had dementia and was unable to care for his minor daughter.[1] Burns came to federal court to complain about the process and result of that dependency proceeding.

Burns premised his putative habeas petition on the notion that his daughter was "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Burns argued that his minor daughter was in the "custody" of another and that the process leading to that situation violated Burns's constitutional rights. The Supreme Court, however, has rejected Burns's argument regarding custody. In *Lehman v. Lycoming County Children's Services*, 458 U.S. 502 (1982), the Supreme Court held that § 2254 does not confer "jurisdiction on the federal courts to consider collateral challenges to state-court judgments involuntarily terminating parental rights." *See id.* at 503, 515-16. In particular, the Court explained, "The 'custody' of foster or adoptive parents over a child is not the type of custody that traditionally has been challenged through federal habeas." *Id.* at 511. It is impermissible "to relitigate, through federal

[1] We learned of these facts because the magistrate judge judicially noticed them from a concurrent 42 U.S.C. § 1983 lawsuit Burns had filed.

habeas, . . . interest in [a petitioner's] own parental rights." *Id.*

In light of *Lehman*, the magistrate judge recommended the case be dismissed for lack of jurisdiction. On December 6, 2017, the district court adopted the magistrate judge's recommendation, dismissing Burns's action without prejudice.

On January 10, 2018, and January 11, 2018, Burns filed documents titled "Demand A Jury Trial" and "In Support Of Lawsuit." The documents appear to be an attempt to revive the lawsuit. They allege, in substance, that the state court was biased and did not properly consider the facts, and they contain a demand for $10 million. On January 18, 2018, construing Burns's filings liberally, the district court explained that they could not qualify as a motion to alter or amend the judgment under Rule 59(e) of the Federal Rules of Civil Procedure because they were not filed within 28 days of the judgment. Moreover, because judgment had been entered, Burns could not have amended his complaint under Rule 15(a). Finally, the filings did not fall within one of Rule 60(b)'s six categories for relief from the judgment.[2]

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[2] On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

Burns filed a notice of appeal on February 2, 2018. That notice was untimely as to his § 2254 petition, which was dismissed on December 6, 2017, and whose appeal window was not tolled by any timely motion. *See* Fed. R. App. P. 4(a)(1)(A), (a)(4)(A). The district court was correct that Burns's January filings were time-barred under Rule 59(e). *See* Fed. R. Civ. P. 59(e) ("A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment."). The district court's remarks about Rule 15(a) were also correct. *See Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010) ("Rule 15(a), by its plain language, governs amendment of pleadings *before* judgment is entered; it has no application *after* judgment is entered.").

Thus, although Burns's brief is unclear on the point, the only order he could timely and validly be appealing is the district court's denial of what it construed to be a Rule 60(b) motion. "We review a district

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(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

court's denial of a Rule 60(b) motion only for an abuse of discretion." *Lambrix v. Sec'y, Fla. Dep't of Corr.*, 851 F.3d 1158, 1170 (11th Cir. 2017). The district court did not abuse its discretion in continuing to rely on the Supreme Court's clear holding in *Lehman*. We are satisfied that there is no basis to disturb the dismissal of Burns's putative habeas action.

AFFIRMED.[3]

[3] We deny Burns's motion to file an amended brief. The proposed amended brief does not change our analysis.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA MIDDLE DIVISION

TIMOTHY BURNS, in proper Plaintiff, Ref A.B., Minor Child,	)	
Petitioner	)	CIVIL ACTION NO.
v.	)	4:17-cv-1784-LSC-JEO
ACTING JUDGE ROBERT L. MINOR,	)	
Respondent.	)	

ORDER

(Filed Jan. 18, 2018)

This civil action was filed on October 23, 2017, by Timothy Burns, *pro se*, on behalf of his minor daughter, A.B., based on a pleading Burns styled, "A Writ of Habeas Corpus." (Doc.[1] 1). On December 6, 2017, the court entered a Memorandum Opinion and an accompanying Final Order that adopted and accepted the Report and Recommendation of the magistrate judge to whom the action was referred and dismissed the action without prejudice. (*See* Docs. 3, 7, 8), In particular, the court

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agreed with the magistrate judge that federal habeas jurisdiction is lacking over Burns's petition because it sought merely to relitigate issues decided by an Alabama state court in child custody proceedings involving A.B., who does not satisfy the jurisdictional "in custody" habeas requirement.

On January 10, 2018, Burns filed in this case a document he captions, "Demand A Jury Trial," which is generally in the form of an amended pleading. (Doc. 9). In the header, Burns lists the "Petitioner" as A.B., "a minor child, by and through her father Timothy Burns," and he lists the sole "Respondent" as the State of Alabama. (*Id.* at 1). In the introductory paragraph, Burns recites that he has "filed this lawsuit under U.S. Constitution due process of law guaranteed by U.S. Constitution 5th and 14th Amendments," and he further states that he "is asking . . . for damages of 10 million dollars. . . ." (*Id.*) On January 11, 2018, he filed another document captioned, "In Support of Lawsuit." (Doc. 10). In that filing, Burns further complains about the state-court proceedings involving A.B.'s custody, including as it relates to various rulings and alleged omissions by the state trial judge, as well as Burns's dissatisfaction with the performance of the attorney that the state court appointed to there represent him. (Id.) On January 12, 2018, he filed another document captioned "Add Summons," which purportedly requests the Clerk to issue a summons. (Doc. 11.)

Given that he filed these recent documents under the civil action number of this case, Burns may contemplate them as asking for some kind of relief in this

now-dismissed habeas action. And *pro se filings* are, of course, due to be liberally construed. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Even so, Burns's filings cannot be construed as a timely motion under Rule 59(e), FED. R. CIV. P., to alter or amend the judgment because it was filed more than 28 days after the judgment was entered. On the other hand, the documents could likely be viewed as a timely motion for relief from the judgment under Rule 60(b), FED. R. CIV. P., which requires only that the motion be filed within a "reasonable time," which must be within one year of the judgment for motions based on Rule 60(b)(1), (2), or (3). Rule 60(c), FED. R. CIV. P. Nevertheless, and timeliness *vel non* aside, nothing in any of the three documents even remotely supports that Burns might be entitled to relief as it relates to the court's judgment of dismissal, whether under Rule 59(e) or Rule 60(b). *See generally Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) ("The only grounds for granting [a Rule 59(e)] motion are newly-discovered evidence or manifest errors of law or fact" (quoting *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999)); Rule 60(b)(1)-(6), FED. R. CIV. P. (specifying the grounds for relief under Rule 60(b)). Accordingly, Burns's filings (Docs. 9, 10, & 11) are due to be denied to the extent they might be liberally construed as post judgment motions under Rule 59 or 60(b).

Alternatively, Burns may conceive his filings as constituting an amended or supplemental pleading asserting new claims for damages against the State of Alabama based upon putative due process violations. The court would advise Burns that damages are not an

available remedy in habeas corpus actions, *Preiser v. Rodriguez*, 411 U.S. 475, 494 (1973), and that, even if they were, the State of Alabama generally enjoys immunity from such claims under the Eleventh Amendment. *See Cross v. State of Ala., State Dep't of Mental Health & Mental Retardation*, 49 F.3d 1490, 1502 (11th Cir. 1995). But more to the point here, as a procedural matter, since this action has been dismissed, Burns cannot amend or supplement his pleading unless he is *granted* relief under Rule 59(e) or Rule 60(b). *See Jacobs v. Tempur-Pedic Intern., Inc.*, 626 F.3d 1327, 1344-45 (11th Cir. 2010); *Henderson v. Secretary Fla. DOC*, 441 F. App'x 629, 630 (11th Cir. 2011). As stated previously, Burns has failed to show that he is entitled to such relief. Thus, Burns's latest filings are also due to be denied insofar as they might be construed as a motion for leave to amend his pleading.

Finally, the court would acknowledge that Burns has another civil action pending in this court, also based on events related to the state-court proceedings over A.B.'s custody. (*See Burns v. Attorney Sarah Brazzolotto Law Firm*, No. 4:17-cv-1728-JEO (N.D. Ala.) (hereinafter the "'1728 Case")). There, Burns, again acting *pro se*, filed an "Emergency Complaint" on October 10, 2017, seeking relief for alleged violations of the federal Constitution, presumably pursuant to 42 U.S.C. § 1983. ('1728 Case, Doc. 1). A review of the docket sheet in that action reveals that no defendant has yet appeared, and, indeed, it does not appear Burns has requested the clerk to issue a summons or has taken any other steps towards service of process.

But insofar as Burns appears to be pursuing civil rights claims in the '1728 Case, the court would advise Burns that he might attempt to raise the claims contained in his most recent filings in this habeas action as part of an amended complaint in the pending '1728 Case. By so advising, the court should not be understood as offering any opinion with regard to whether any of the claims in that proposed pleading have merit, whether Burns is authorized to act as counsel in relation to any claims purportedly brought on behalf of A.B., or whether the court might deem procedural barriers to preclude Burns from amending his complaint in the '1728 Case.

Based on the foregoing, Burns's latest filings (Docs. 9, 10, & 11), whether construed as seeking post-judgment relief under Rule 59(e) or Rule 60(b) or as a motion for leave to amend his pleading, are hereby **DENIED. Burns is further advised that the court will take no further action on said filings to the extent that he might conceive them to be an amended complaint or habeas petition asserting claims for relief.**

Done this 18th day of January 2018.

/s/ L. Scott Coogler
L. Scott Coogler
United States District Judge
[160704]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA MIDDLE DIVISION

TIMOTHY BURNS, in proper Plaintiff, Ref A.B., Minor Child, Petitioner	)	CIVIL ACTION NO. 4:17-cv-1784-LSC-JEO
v.	)	
ACTING JUDGE ROBERT L. MINOR, Respondent.	)	

MEMORANDUM OPINION

(Filed Dec. 6, 2017)

This civil action was initiated on October 23, 2017, by Timothy Burns on behalf of his minor daughter, A.B., based on a pleading Burns has styled, "A Writ of Habeas Corpus." (Doc.[1] 1). On November 3, 2017, the magistrate judge to whom the case was referred entered a Report and Recommendation ("R&R") pursuant to 28 U.S.C. § 636(b), FED. R. CIV. P. 72(b)(1), recommending that the Burns's petition be dismissed for lack of jurisdiction, because its allegations indicate

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that A.B. is not "in custody" for purposes of the federal habeas corpus statutes. (Doc. 3). The court advised Burns that he might file objections to the magistrate judge's R&R, but the time in which he was required to do so has expired with no objections having been filed. (*See* Docs. 3, 5).

Having carefully reviewed and considered *de novo* all the materials in the court file, including the magistrate judge's Report and Recommendation, the court is of the opinion that the magistrate judge's findings are due to be and are hereby **ADOPTED** and his recommendation is **ACCEPTED**. As a result, the petition for writ of habeas corpus is due to be **DISMISSED WITHOUT PREJUDICE**, for lack of jurisdiction. A separate final order will be entered.

Done this 6th day of December 2017.

/s/ L. Scott Coogler
L. Scott Coogler
United States District Judge
[160704]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA MIDDLE DIVISION

TIMOTHY BURNS, in proper Plaintiff, Ref A.B., Minor Child,	)	
Petitioner	)	CIVIL ACTION NO.
v.	)	4:17-cv-1784-LSC-JEO
ACTING JUDGE ROBERT L. MINOR,	)	
Respondent.	)	

FINAL ORDER

(Filed Dec. 6, 2017)

For the reasons stated in the Memorandum Opinion entered with this Final Order, the above-styled habeas corpus action filed by Timothy Burns on behalf of his minor daughter, A.B., is **DISMISSED WITHOUT PREJUDICE**, for lack of jurisdiction.

Done this 6th day of December 2017.

/s/ L. Scott Coogler
L. Scott Coogler
United States District Judge
[160704]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA MIDDLE DIVISION

TIMOTHY BURNS, in proper Plaintiff, Ref A.B., Minor Child,	)	
Petitioner	)	CIVIL ACTION NO.
v.	)	4:17-cv-1784-LSC-JEO
ACTING JUDGE ROBERT L. MINOR,	)	
Respondent.	)	

REPORT AND RECOMMENDATION

(Filed Nov. 3, 2017)

This civil action was initiated by Timothy Burns on behalf of his minor daughter, A.B., based on a pleading Burns has styled, "A Writ of Habeas Corpus." (Doc.[1] 1). The action is referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b), FED. R. CIV. P. 72(b)(1), and the standard procedures of this court. Burns has paid the nominal habeas corpus filing fee of five dollars. *See* 28 U.S.C. § 1914(a). The cause now comes to be heard for a report and

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recommendation on the petition, on preliminary review. *See* 28 U.S.C. § 636(b); Rule 4, RULES GOVERNING § 2254 HABEAS PROCEEDINGS. Upon consideration, it will be recommended that the petition be dismissed for lack of jurisdiction because Burns's allegations show that A.B. is not "in custody" for habeas corpus purposes.

I.

The genesis of this action is a child custody dispute over A.B. that is ongoing in Alabama state court. Burns's habeas petition filed in this court is just over one page long, and its allegations, standing alone, are sparse, vague, and confusing. However, Burns has also recently filed, again acting *pro se*, a separate civil action in this court, which is assigned to the undersigned and arises out of the same subject matter. *See Burns v. Attorney Sarah Brazzolotto Law Firm*, No. 4:17-cv-1728-JEO (the "Case No. 17-1728"), Doc. 1 (N.D. Ala. Oct. 10, 2017); *see also* Case No. 17-1728, Doc. 3. Burns's filings in that other case, of which the undersigned may take judicial notice, *see Nguyen v. United States*, 556 F.3d 1244, 1259 n. 7 (11th Cir. 2009), are also not a model of clarity, but they help fill in some basic informational gaps that might otherwise exist.

The source of Burns's discontent is that A.B., his 10-year old daughter, has recently been removed from his custody temporarily pursuant to an order of the Juvenile Court of St. Clair County, Alabama (the "State Court"). That order was signed by St. Clair County

District Judge Robert L. Minor, who Burns has named as the respondent in this habeas action. (*See generally* Doc. 1; Case No. 17-1728, Doc. 1 at 4-5). The State Court case began in August 2017 when Burns's adult daughter, Turquoise K. Garnett ("Garnett"), filed a dependency petition alleging that Burns suffers from early signs of dementia, is unable to care for A.B., and has "hit and choked" her. (Case No. 17-1728, Doc. 1 at 7). On October 4, 2017, Judge Minor held an evidentiary hearing, at which Burns did not appear, because, he says, he was not "served" or otherwise "invited" to the proceeding. (*Id.* at 1, 46). At the conclusion of the hearing, Judge Minor entered an order granting the dependency petition and awarding temporary custody of A.B. to Garnett, who lives in Louisville, Kentucky. (*Id.* at 4-5). Accordingly, Burns was told later on October 4th by a representative of A.B.'s elementary school that A.B. could not be released to his custody because of the State Court's order. (Doc. 1 ¶ 1; Case No. 17-1728, Doc. 1 at 1).

On October 17, 2017, Judge Minor presided over another hearing on the custody matter, at which Burns was present. (Doc. 1 ¶ 1; Case No. 17-1728, Doc. 3). It appears, however, that Judge Minor has ruled that A.B. is due to remain in Garnett's custody. (*See generally* Doc. 1; Case No. 17-1728, Doc. 3). Or as Burns has put it in the other case, "The Juvenile Court of St. Clair County is holding [A.B.] hostage at [Garnett's address in] Louisville, KY based on false allegations. . . ." (Case No. 17-1728, Doc. 3).

Burns filed this habeas corpus action on October 23, 2017. (Doc. 1). Burns complains therein that Judge Minor has violated the Fifth and Fourteenth Amendments to the United States Constitution. (*Id.* at 1). In support, Burns charges that Judge Minor has done the following: interfered with Burns's parental right to custody of A.B. (*id.* ¶¶ 1, 2); "abused his power as an acting judge" (*id.* ¶ 3); "discriminated" against Burns on an unspecified basis (*id.* ¶ 5); "fail[ed] to reveal any basis for his action" (Doc. 1, ¶ 5); "conspired with the law firm" (*id.* ¶ 7), presumably that of A.B.'s guardian ad litem in the State Court proceedings, Sarah Brazzolotto (*see* Case No. 17-1728, Doc. 1); and removed A.B. from Burns's custody based on "false allegations." (Doc. 1, ¶ 8). Finally, Burns maintains that Judge Minor "has been out of control," and he asks this court to remove Judge Minor from presiding over the State Court case. (*Id.* ¶ 6; *id.* at p. 2).

II.

A.

This case comes to be heard on preliminary review pursuant to Rule 4 of the RULES GOVERNING § 2254 HABEAS PROCEEDINGS. Under that Rule, when a habeas corpus petition is filed in federal district court, the clerk must "promptly forward" it to the appropriate judicial officer under the court's assignment procedure, whereupon the "judge must promptly examine it." *See also id.*, Rule 1(b). "If it plainly appears from the petition and any attached documents that the petitioner is

not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner." *Id.*, Rule 4. "If the petition is not dismissed, the judge must order the respondent to file an answer, motion, or other response. . . ." *Id.*

B.

"[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Indeed, the relevant federal habeas statutes give the United States district courts jurisdiction to entertain petitions for habeas relief only from persons who are "in custody" in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2241(c)(3); 28 U.S.C. § 2254(a); *see Maleng v. Cook*, 490 U.S. 488, 490 (1989); *Howard v. Warden*, 776 F.3d 772, 775 (11th Cir. 2015). Thus, unless the petitioner is deemed to be "in custody" at the time the petition is filed, the district court lacks habeas corpus jurisdiction and must dismiss the petition. *See Maleng*, 490 U.S. at 490-91.

In *Lehman v. Lycoming County Children's Services*, 458 U.S. 502, 516 (1982), a case involving a final termination of parental rights, the Supreme Court held that the habeas statutes do not confer jurisdiction on the federal courts to hear challenges to state-court judgments or orders relating to child custody because such children are deemed not to be "in custody" for

habeas purposes. *See also Staley v. Ledbetter*, 837 F.2d 1016, 1018 n. 3 (11th Cir. 1988); *Scales v. Talladega Cty. Dep't of Human Resources*, No. 16-15799, ___ F. App'x ___, ___, 2017 WL 4785939 (11th Cir. Oct. 24, 2017). The *Lehman* Court explained:

> Ms. Lehman argues that her sons are involuntarily in the custody of the State for purposes of § 2254 because they are in foster homes pursuant to an order issued by a state court. Her sons, of course, are not prisoners. Nor do they suffer any restrictions imposed by a state criminal justice system. These factors alone distinguish this case from all other cases in which this Court has sustained habeas challenges to state-court judgments. Moreover, although the children have been placed in foster homes pursuant to an order of a Pennsylvania court, they are not in the "custody" of the State in the sense in which that term has been used by this Court in determining the availability of the writ of habeas corpus. They are in the "custody" of their foster parents in essentially the same way, and to the same extent, other children are in the custody of their natural or adoptive parents. Their situation in this respect differs little from the situation of other children in the public generally; they suffer no unusual restraints not imposed on other children. . . . The "custody" of foster or adoptive parents over a child is not the type of custody that traditionally has been challenged through federal habeas. Ms. Lehman simply seeks to relitigate, through federal habeas, not any

> liberty interest of her sons, but the interest in her own parental rights.

458 U.S. at 510-11.

And so it is here. Like the mother in *Lehman*, Burns is attempting to relitigate his interest in his own parental rights relative to A.B. through the medium of a federal habeas corpus action. However, this court lacks jurisdiction unless A.B. is deemed to be "in custody" for purposes of the federal habeas corpus statutes. And *Lehman* teaches that she is not, despite that the State Court has ordered A.B. removed from Burns's home and has awarded custody to Garnett. Because this court lacks habeas jurisdiction over Burns's petition, it is due to be dismissed.[2]

III.

Based on the foregoing, it is **RECOMMENDED** that Burns's habeas corpus petition (Doc. 1) be **DISMISSED WITHOUT PREJUDICE**, for want of jurisdiction.

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[2] Of course, a dismissal of this habeas action would have no effect on Burns's claims in his "other" *pro se* action pending in this court, Case No. 4:17-cv-1728-JEO. There he seeks damages and injunctive relief to redress alleged violations of his civil rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, presumably pursuant to 42 U.S.C. § 1983. The undersigned would observe, however, that while Burns has expressly requested in that action to have this court order the State Court to return A.B. to Burns's custody, Burns has not named Judge Minor as a defendant. (*See* Case No. 17-1728, Doc. 1). Rather, the only defendant he names in that action is the law firm of A.B.'s guardian ad litem in the State Court proceedings, Brazzolotto. (*Id.*)

Notice of Right to Object

Any party who objects to this report and recommendation must, within fourteen (14) days of the date on which it is entered, file specific written objections with the clerk of this court. Any objections to the failure of the magistrate judge to address any contention raised in the petition also must be included. Failure to do so will bar any later challenge or review of the factual findings of the magistrate judge, except for plain error. *See* 28 U.S.C. § 636(b)(1)(C). In order to challenge the findings of the magistrate judge, a party must file with the clerk of the court written objections which shall specifically identify the portions of the proposed findings and recommendation to which objection is made and the specific basis for objection. A copy of the objections must be served upon all other parties to the action.

Upon receipt of objections meeting the specificity requirement set out above, a United States District Judge shall make a *de novo* determination of those portions of the report, proposed findings, or recommendation to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge. The district judge, however, need conduct a hearing only in his discretion or if required by law, and may consider the record developed before the magistrate judge, making his own determination on the basis of that record. The district judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions. Objections not meeting the

specificity requirement set out above will not be considered by a district judge.

A party may not appeal a magistrate judge's recommendation directly to the United States Court of Appeals for the Eleventh Circuit. Appeals may be made only from a final judgment entered by or at the direction of a district judge.

The Clerk is **DIRECTED** to serve a copy of this report and recommendation upon the petitioner.

DONE, this 3rd day of November, 2017.

/s/ John E. Ott
JOHN E. OTT
Chief United States
Magistrate Judge