UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IRA ALSTON,
Petitioner,

PRISONER
Case No. 3:10-CV-882 (DJS)(TPS)

V.

BRIAN K. MURPHY, ET AL.
Respondents.

RULING AND ORDER

On June 7, 2010, petitioner Ira Alston, an inmate confined at the Northern Correctional Institution in Somers, Connecticut, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to an Order issued by United States Magistrate Judge Thomas P. Smith, the petitioner filed an amended petition on a Section 2254 Habeas Corpus Petition form on July 19, 2010. (Dkt. # 3.) In a Ruling and Order issued on January 24, 2011, Magistrate Judge Smith granted the petitioner's motion for leave to file a second amended petition (dkt. # 4) and directed the petitioner to file his second amended petition on a Section 2254 form. (Dkt. # 6.) In the same Ruling, Magistrate Judge Smith denied the petitioner's motion to expedite his habeas petition. (Id.)

The petitioner subsequently filed an objection to Magistrate Smith's Ruling and Order for the stated reason that the requirement in L.Civ. R. 8 that "[P]etitions [for writ of habeas corpus] and motions shall be on forms approved by the Court and supplied by the Clerk" applies only to the filing of original petitions and not to amended petitions. (Dkt. # 7.) On March 16, 2011, the petitioner also filed a "Motion for Emergency Relief," in which he seeks "an expedited ruling and/or order in connection with his objection to the magistrate judge ruling and order." (Dkt. # 9,

at 1.) As stated in the petitioner's motion, he is "seeking to proceed in this District Court with all grounds of error asserted in [a] state court [habeas application] due to an alleged un-necessary delay in resolution in the state court matter . . . . The Petitioner h[as] experienced a 5 yr. delay in his state court cause of action via writ of habeas corpus." (Id. at 2, 3.)

As further explained below, the Court **OVERRULES** the petitioner's objection **(dkt. # 7)** and further **DENIES** the petitioner's Motion for Emergency Relief (**dkt. # 9).**

DISCUSSION

Objection to Magistrate Judge Smith's Ruling and Order

As previously noted, the petitioner has objected to Magistrate Judge Smith's Ruling and Order on the basis that L. Civ. R. 8 does not require that an amended habeas corpus petition, as opposed to an original petition, be filed "on forms approved by the Court and supplied by the Clerk." The Court notes that on February 24, 2011, the petitioner, despite having filed an objection to Magistrate Judge Smith's directive to file his second amended petition on a Section 2254 form, did in fact file a second amended petition utilizing a Section 2254 Habeas Corpus Petition form. (Dkt. # 8.) Consequently, the Court finds the petitioner's objection to be moot and overrules the petitioner's objection.

Petitioner's Motion for Emergency Relief

Although the petitioner's Motion for Emergency Relief initially refers to "an expedited ruling and/or order in connection with his objection to the magistrate judge ruling and order," (dkt. # 9, at 1), the overall tenor of that motion indicates that what the petitioner actually seeks is an expedited ruling on his federal habeas petition. The petitioner contends that the habeas petition he has filed in this Court presents the same grounds of error raised in his pending state

court habeas application, and that he is "seeking to proceed in this District Court with all grounds of error asserted in the state court due to an alleged un-necessary delay in resolution in the state court matter." (Dkt. # 9, at 2.) The petitioner states that he has "experienced a 5 yr. delay in his state court cause of action via writ of habeas corpus." (Id. at 3.)

In his Motion for Emergency Relief, the petitioner represents that his state court habeas petition is pending in the Connecticut Superior Court in Docket No. CV 07-4001668-S. (Dkt. # 9, at 2.) The docket sheet for Alston v. Warden, CV-07-4001668-S, currently pending in the Connecticut Superior Court, indicates that from March 9, 2007, the filing date of the petitioner's application for writ of habeas corpus[1], until the present time, the petitioner has amended his complaint on four occasions. (Docket Entry Nos. 114, 121, 140 and 145)[2] During that same time period, eight motions for continuance have been requested and granted – – all by or on behalf of the petitioner. (Docket Entry Nos. 111, 112, 115, 117, 122, 125, 156 and 160)[3] The Court finds the petitioner's contention that he has been subjected to unnecessary delays in the state court proceeding to be inconsistent with the state court record in that proceeding and denies his Motion for Emergency Relief.

CONCLUSION

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[1] In his Motion for Emergency Relief, the petitioner indicates that a previous state court habeas application, Docket No. CV 05-4000303-S, was consolidated with Docket No. CV 07-4001668-S. While the Court takes note of that representation, the Court does not find that circumstance to be significant for purposes of ruling on the petitioner's motion.

[2] See http://civilinquiry.jud.ct.gov/CaseDetail/PublicCaseDetail.aspx?DocketNo=TSRCV074001668S (last visited July 5, 2011).

[3] Id.

For the foregoing reasons, the petitioner's objection to Magistrate Judge Smith's Ruling and Order **(dkt. # 7)** is **OVERRULED**. Additionally, the petitioner's Motion for Emergency Order **(dkt. # 9)** is **DENIED**.

SO ORDERED this 7th day of July, 2011.

/s/ DJS

DOMINIC J. SQUATRITO
UNITED STATES DISTRICT JUDGE