

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

JOSEPH TIGER D. PRINCE,	:	
	:	
Petitioner,	:	
	:	
vs.	:	File No. 1:05-CV-55 (WLS)
	:	
MICHELLE MARTIN, Warden,	:	
	:	
Respondent.	:	

RECOMMENDATION

The *pro se* petitioner filed this § 2254 action challenging his 1999 Dougherty County conviction resulting from a jury trial for malice murder. Presently pending in this action are several motions filed by petitioner.

1. Petitioner’s Motion to Amend (Doc. 67)

Petitioner files this motion requesting to delete all but five of the original grounds for his petition for habeas corpus relief. The Grounds that petitioner wishes to proceed are Ground Two, Ground Four, Ground Five, Ground Six, and Ground Fourteen. Petitioner waives the other grounds in his original petition. It is the RECOMMENDATION of the undersigned that Petitioner’s motion be **GRANTED**, and that this petition proceed with the five grounds above.

2. Petitioner’s Motion to Vacate (Doc. 69)

In this motion, petitioner contends that his sentence is void under Georgia law and should be vacated, pending retrial or resentencing. This is merely a continuation of the petition, and therefore should not be the subject of a separate motion. The court will consider the arguments

made in the determination of the merits of the petition. Therefore, it is the Recommendation of the undersigned that this motion be **DENIED**.

3. *Petitioner's Motions for Default Judgment (Docs. 77 and 79)*

Petitioner contends that he is entitled to default judgment because respondent has not filed a response to various motions filed by petitioner. However, respondent has filed an answer and brief in support of the conviction and sentence of petitioner; therefore, there are no grounds for default judgment for respondent's failure to file a response to each and every motion petitioner has filed. It is therefore the RECOMMENDATION of the undersigned that these motions for default be summarily **DENIED**.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable W. Louis Sands, United States District Judge, WITHIN TEN (10) DAYS of receipt thereof.

SO RECOMMENDED, this 6th day of October, 2009.

//S Richard L. Hodge
RICHARD L. HODGE
UNITED STATES MAGISTRATE JUDGE

msd