

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ERIC STEVENSON	:	CIVIL ACTION
Petitioner,	:	
	:	
vs.	:	
	:	NO. 04-1908
PALAKOVICH, ET AL.	:	
Respondents	:	

ORDER AND MEMORANDUM

ORDER

AND NOW, this 1st day of June, 2005, upon consideration of the pro se Petition for Writ of Habeas Corpus and Petitioner’s Affidavit Accompanying Motion for Permission to Proceed in the District court and/or on Appeal in Forma Pauperis in Habeas Corpus Cases under 28 U.S.C. Sections 2241 and 2254 (Document No. 1, filed May 3, 2004), the Report and Recommendation of United States Magistrate Judge Linda K. Caracappa filed January 10, 2005 (Document No. 14, filed January 10, 2005), pro se petitioner’s Motion for Reconsideration of Decision (Document No. 15, filed January 27, 2005),¹ pro se petitioner’s Motion for Order Restraining Obstruction of Inmate Assistance (Or, Appointment of Counsel By This Court, to Assist Petitioner) (Document No. 16, filed January 27, 2005), Petitioners Compliance With Judicial Order (Establishing Necessity of Judicial Observance re: Access Obstruction) (Document No. 18, filed March 23, 2005), and Response to Petitioner’s Motion for Reconsideration of Decision and Motion for

¹ The Court will treat petitioner’s Motion for Reconsideration of Decision as objections to Magistrate Judge Caracappa’s Report and Recommendation for two reasons. First, a motion for reconsideration may not, as does petitioner’s Motion for Reconsideration in this case, raise issues not previously presented to the Court, in this case, the Magistrate Judge. Second, treating petitioner’s Motion for Reconsideration as objections to Magistrate Judge Caracappa’s Report and Recommendation will enable the Court to rule on the merits of the issues petitioner raises in the motion and avoid reference to the Magistrate Judge for a supplemental report and recommendation and further delay in deciding this case.

Order Restraining Obstruction of Inmate Assistance (Or Appointment of Counsel by This Court, to Assist Petitioner) (Document No. 19, filed April 5, 2005), **IT IS ORDERED** as follows:

1. Petitioner's Motion to Proceed in forma pauperis is **GRANTED**;
2. The Report and Recommendation of United States Magistrate Judge Linda K. Caracappa dated January 10, 2005, is **APPROVED** and **ADOPTED**;
3. Petitioner's Motion for Reconsideration of Decision (Document No. 15), treated by the Court as petitioner's objections to Magistrate Judge Caracappa's Report and Recommendation dated January 10, 2005, are **OVERRULED**;
4. The Petition for Writ of Habeas Corpus filed by Eric Stevenson (Document No. 1) is **DISMISSED WITH PREJUDICE**;
5. Petitioner's Motion for Order Restraining Obstruction of Inmate Assistance (Or, Appointment of Counsel By This Court, to Assist Petitioner) (Document No. 16), is **DENIED**; and,
6. Petitioner's alternative request for appointment of counsel is **DENIED**; and,
7. A certificate of appealability will not issue on the ground that petitioner has not made a substantial showing of a denial of a constitutional right as required under 28 U.S.C. § 2253(c)(2).

MEMORANDUM

Petitioner Eric Stevenson, an inmate at the State Correctional Institution at Smithfield (“SCI-Smithfield”), in Huntingdon, Pennsylvania, filed a pro se Petition for a Writ of Habeas Corpus (the “Habeas Petition”). Before the Court is the Report and Recommendation of United States Magistrate Judge Linda K. Caracappa dated January 10, 2005, petitioner’s Motion for Reconsideration of Decision,² petitioner’s Motion for Order Restraining Obstruction of Inmate Assistance (Or, Appointment of Counsel By This Court, to Assist Petitioner), and Petitioners Compliance With Judicial Order (Establishing Necessity of Judicial Observance re: Access Obstruction), and the response to petitioner’s filings after issuance of the Report and Recommendation. For the reasons set forth below, the Court approves and adopts Magistrate Judge Caracappa’s Report and Recommendation, dismisses the Habeas Petition with prejudice, and denies petitioner’s other motions and requests.

I. BACKGROUND

The facts and procedural history necessary to this opinion, taken from the Report and Recommendation and the record in this case, are set forth below.

On February 24, 1996, petitioner and another man, Michael Stephens, got into a fistfight that was eventually broken up by police. After the fight, petitioner encountered Terence Armstrong, a friend of Stephens, and asked Armstrong about Stephens’ whereabouts. When Armstrong replied that he had no idea where Stephens had gone, petitioner shot and killed him.

On February 4, 1997, petitioner was convicted by a jury in the Philadelphia County Court

²As stated in the attached Order, the Court will treat petitioner’s Motion for Reconsideration of Decision as objections to Magistrate Judge Caracappa’s Report and Recommendation.

of Common Pleas of first degree murder, a violation of the Uniform Firearms Act, and possession of an instrument of crime. Petitioner was subsequently sentenced to life imprisonment.

Petitioner filed a direct appeal to the Pennsylvania Superior Court, which was denied on September 25, 1999. Commonwealth v. Stevenson, 747 A.2d 420 (Pa. Super. 1999). Petitioner then petitioned the Pennsylvania Supreme Court for Allowance of Appeal, which was denied on March 20, 2000. Commonwealth v. Stevenson, 753 A.2d 817 (Pa. 2000).

On March 16, 2001, petitioner filed a pro se petition for collateral relief under Pennsylvania's Post Conviction Relief Act ("PCRA"), in which he claimed:

- (1) trial court error related to the allowance of "double hearsay" evidence; and,
- (2) ineffectiveness of trial counsel.

(Habeas Petition at 6). The court appointed counsel for petitioner and dismissed his petition without a hearing on June 18, 2002.

The Superior Court affirmed the decision of the PCRA court on June 13, 2003. Commonwealth v. Stevenson, 830 A.2d 1053 (Pa. Super. 2003). Petitioner next filed a Petition for Allowance of Appeal, which the Pennsylvania Supreme Court denied on November 12, 2003. Commonwealth v. Stevenson, 836 A.2d 122 (Pa. 2003).

Petitioner then filed the instant Habeas Petition on May 3, 2004, alleging:

- (1) the trial court erred in allowing hearsay evidence to be presented to the jury as it related to a hearsay dying declaration;
- (2) it was not harmless error for the trial court to have allowed "double hearsay" evidence;
- (3) the prosecutor committed reversible error during closing arguments by expressing his personal beliefs and relying upon "double hearsay" evidence;
- (4) trial counsel was ineffective for his failure to object at trial to the Commonwealth's prejudicial closing argument, the repetitive use of "double hearsay" evidence, and the jury

instructions on dying declarations; and,

(5) trial counsel was ineffective for failing to raise these claims on appeal.

(Habeas Petition at 9-10). In their response to the Habeas Petition, respondents argue that the petition should be denied as untimely.

After review of the Habeas Petition, the response, and the record in this case, Magistrate Judge Caracappa issued a Report and Recommendation on January 10, 2005, in which she recommended that the petition be dismissed as untimely.

Following the issuance of the Report and Recommendation, petitioner filed a Motion for Reconsideration of Decision and a Motion for Order Restraining Obstruction of Inmate Assistance (Or, Appointment of Counsel By This Court, to Assist Petitioner). After reviewing those submissions, the Court issued an Order directing petitioner (1) to file certain exhibits not found in his original submissions and (2) to set forth in a supplemental memorandum the way in which he claimed the respondents' conduct hindered his ability to pursue his habeas corpus petition in a timely manner, that is, that he sustained "actual injury." The Court also directed respondents to address petitioner's claims upon receipt of petitioner's exhibits and supplemental memorandum. Petitioner then filed a document entitled, "Petitioners Compliance With Judicial Order (Establishing Necessity of Judicial Observance re: Access Obstruction)," and respondents filed their response ("Response").

In his submissions after issuance of the Report and Recommendation, petitioner argues that he is entitled to relief because (1) SCI-Smithfield's legal reference assistance and provision of a single paralegal are inadequate for his needs, (2) legal papers belonging to one inmate are confiscated if found in another inmate's cell, (3) his access to the SCI-Smithfield law library is

limited, and (4) “the factual taking of such U.S. Mail as destined to this Court out of the U.S. Mail Box. Where such original was delayed, obstructed, and destroyed.” (See Petitioners Compliance at 2, 7, 10).

In the Response to petitioner’s submissions after issuance of the Report and Recommendation, respondents take the position that the Habeas Petition was not timely filed. Respondents further argue that equitable tolling of the limitations period for filing the Habeas Petition is not warranted because petitioner failed to explain how the challenged conditions at SCI-Smithfield prevented him from filing a timely petition. (Response at 1).

II. DISCUSSION

Petitioner argues that conditions at SCI-Smithfield were such that he was denied access to the court in four different ways, as follows: (1) SCI-Smithfield provided him with insufficient paralegal and reference assistance, (2) legal papers belonging to one inmate are confiscated by SCI-Smithfield’s corrections officers if found in another inmate’s cell, (3) his access to the SCI-Smithfield law library was limited, and (4) SCI-Smithfield’s corrections officers have allegedly removed court papers from the U.S. Mail. Making this argument in his Motion for Reconsideration, petitioner takes the position that the denial of access to the courts violates his constitutional rights. He also argues, in a general way, that such denial excuses the late filing of the Habeas Petition.

Petitioner’s challenge to the constitutionality of the conditions of his confinement and request for injunctive relief from those conditions are not properly before the Court in this

habeas proceeding.³ Construing petitioner's submissions after issuance of the Report and Recommendation liberally, the issue before the Court is the extent to which plaintiff's complaints about the conditions at SCI-Smithfield, whether those conditions are constitutional or not, warrant equitable tolling of the AEDPA limitations period in this case. Nevertheless, the Court will address the constitutionality of the challenged practices, and, more importantly for purposes of the instant habeas petition, the question whether any of the practices at SCI-Smithfield, constitutional or not, warrant equitable tolling of the AEDPA limitations period.

A. Request to Proceed In Forma Pauperis

Petitioner has filed a request for leave to proceed in forma pauperis. The right to proceed in forma pauperis, particularly in pro se cases, should be granted where the required affidavit of poverty is filed, except in extreme circumstances. Sinwell v. Shapp, 536 F.2d 15, 19 (3d Cir. 1976) (citing Lockhart v. D'Urso, 408 F.2d 354 (3d Cir. 1969)). Petitioner has filed the required affidavit, which the Court has reviewed and finds sufficient to excuse his obligation to pay the costs of this action. Accordingly, the Court grants petitioner's request to proceed in forma pauperis.

B. Untimeliness of Petition

The Court agrees with Magistrate Judge Caracappa's conclusion that petitioner's habeas petition was not timely filed. That conclusion is based on an analysis of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2241 et seq.

³ Challenges to conditions of confinement and associated requests for injunctive relief from those conditions should be presented in an action asserted under 42 U.S.C. § 1983, not in a habeas proceeding. Dussan v. United States, 2003 U.S. Dist. LEXIS 22195, at *7 (E.D. Pa. Nov. 25, 2003).

The AEDPA provides, inter alia:

A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review[.]⁴

28 U.S.C. § 2244(d)(1). The statute creates a tolling exception, under which “[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.” 28 U.S.C. § 2244(d)(2). A properly filed application is an “[application] submitted according to the state’s procedural requirements, such as the rules governing the time and place of filing.” Lovasz v. Vaughn, 134 F.3d 146, 148 (3d Cir. 1998). An untimely application dismissed as time-barred by a state court is not a “properly filed application” for tolling purposes. Merritt v. Blaine, 326 F.3d 157, 165-66 (3d Cir. 2003).

In this case, petitioner’s conviction became final on June 18, 2000, the expiration of the

⁴AEDPA sets forth three other potential starting points at which the running of the limitations period may commence:

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1). Because the facts of this case do not implicate any of these other three starting points, the Court will not consider them.

time for petitioner to seek certiorari from the United States Supreme Court. Kapral v. United States, 166 F.3d 565, 575 (3d Cir. 1999). Thus, pursuant to AEDPA, petitioner would have had until June 17, 2001 to file his habeas corpus petition. The AEDPA limitations period was, however, tolled when petitioner filed his PCRA petition on March 16, 2001. 28 U.S.C. § 2244 (d)(2). The PCRA petition was pending until November 12, 2003, when the Pennsylvania Supreme Court denied the Petition for Allowance of Appeal.

When the Pennsylvania Supreme Court denied the petitioner's request for Allowance of Appeal, there were ninety-three days remaining in the AEDPA limitations period. Accordingly, petitioner had until February 14, 2004 to file a timely habeas corpus petition. Petitioner did not file the instant petition until April 30, 2004.⁵ Based on the foregoing, Magistrate Judge Caracappa concluded that the habeas petition was untimely.

C. Constitutionality of SCI-Smithfield's Practices

Petitioner takes the position that the challenged practices at SCI-Smithfield violated his constitutional right to access the courts. For the reasons set forth below, the Court rejects this argument.

1. Right of Access to the Courts – Generally

Addressing prisoners' access to the courts, the Supreme Court stated in Bounds v. Smith that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners

⁵While the instant habeas petition was filed with the Court on May 3, 2004, the petition was signed and dated by petitioner on April 30, 2004. The Court will treat April 30, 2004 as the effective date of the petition's filing. Saunders v. Vaughn, 2004 U.S. Dist. LEXIS 22626, at *6 n. 3 (E.D. Pa. Nov. 9, 2004).

with adequate law libraries or adequate assistance from persons trained in the law.” 430 U.S. 817, 828 (1977). In Lewis v. Casey, the Supreme Court held that in order to demonstrate a claim that inadequate legal materials or assistance resulted in denial of access to the courts, an inmate must show “actual injury”, i.e., that the inadequacy hindered his ability to pursue a legal claim. 518 U.S. 343, 351 (1996). “Actual injury” includes the loss of a non-frivolous claim that relates to a challenge, direct or collateral, to an inmate's conviction or relates to a challenge to the conditions of confinement. Id. at 351-54. Prisoners asserting denial of access to the courts claims must demonstrate their “actual injury” with specificity. See Rauso v. Vaughn, 2000 U.S. Dist. LEXIS 9035, at *40-41 (E.D. Pa. June 26, 2000) (finding prisoner’s claim that confiscation of legal materials caused “inability to properly discover the issues [related to his appeal] and the case law to support it” too speculative to demonstrate actual injury).

2. Paralegal and Reference Assistance

The Court rejects petitioner’s claim that SCI-Smithfield’s provision of a single paralegal to assist its inmates is so inadequate that it violates his constitutional right to access the courts.

With respect to the provision of legal assistance to inmates, prison officials are not constitutionally required to provide both legal assistance and a law library. Bounds, 430 U.S. at 832. Where prison officials give inmates proper access to a law library, the officials’ provision of a single paralegal to assist those inmates is sufficient to defeat a claim of denial of access to the courts. E.g., Ashley v. Dudlek, 1995 WL 562292, at *6-7 (D. Del. Aug. 25, 1995). In this case, SCI-Smithfield has provided petitioner with proper library access, see infra, and the Court concludes that SCI-Smithfield’s provision of a single paralegal for the prison population is not an unconstitutional denial of access to the courts. Id.

3. Confiscation of an Inmate's Legal Materials Found in Another Inmate's Cell

Petitioner argues that SCI-Smithfield's policy of confiscating legal materials belonging to one inmate if found in another inmate's cell is unconstitutional. That argument is rejected.

Inmates do not have a freestanding right to legal assistance, Lewis, 518 U.S. at 618, and in cases of conflict between prisoner rights and institutional regulation, the Supreme Court has established that when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is "reasonably related to legitimate penological interests." Turner v. Safley, 482 U.S. 78, 89 (1987). The maintenance of safety and security at a penal institution has been recognized as a legitimate penological interest, id. at 92, and prison officials may restrict communications of legal material between inmates so long as such restrictions are related to necessary penological interests. E.g., Giba v. Cook, 232 F. Supp. 2d 1171, 1188 (D. Or. 2002) (finding that prison regulation prohibiting inmates from possessing other inmates' legal materials was "rationally related to a legitimate and neutral penological objective and . . . serve[d] valid governmental interests of safety and security.>").

SCI-Smithfield officials have stated (1) that inmates may help other inmates with their legal work, and (2) that the SCI-Smithfield regulation prohibiting inmates from possessing the legal materials of other inmates in their cells is designed to prevent disputes and safety problems for prisoners and guards. (Response at 2 & n. 3). On this issue, petitioner admits that he has received assistance from other inmates; "[t]he petitioner has had assistance from incarcerated persons basically knowledgeable regarding the rules and procedures related to Habeas Corpus matters, since his incarceration." (Motion for Order Restraining Obstruction of Inmate

Assistance at 1). Based on the statements of SCI-Smithfield officials, the Court concludes that SCI-Smithfield's policy regarding inmates' possession in their cells of other inmates' legal papers is reasonably related to the legitimate penological interest of maintaining safety within the facility and concludes that this policy does not violate petitioner's constitutional right to access the courts. See Giba, 232 F. Supp. 2d at 1188.

4. Access to Law Library

Petitioner claims that SCI-Smithfield's library access policy unconstitutionally denied him access to the courts. With respect to access to law libraries, "the Constitution does not guarantee a prisoner unlimited access to a law library. Prison officials of necessity must regulate the time, manner, and place in which library facilities are used." Lindquist v. Idaho State Bd. of Corrections, 776 F.2d 851, 858 (9th Cir. 1985); see also Hoover v. Watson, 886 F. Supp. 410, 419-20 (D. Del. 1995). An inmate is not denied meaningful access to the library merely because he must wait his turn to use the library. Lindquist, 776 F.2d at 858. Delaying or restricting inmates' access to a library is permissible because of security or other penological concerns. Lewis, 518 U.S. at 362.

In this case, petitioner's library access is limited to several hours per week. The Court concludes that such a limitation, without more, does not violate petitioner's constitutional right to access the courts. See Cookish v. Rouleau, 2004 WL 443208, at *9 (D.N.H. Mar. 11, 2004) (limiting inmate access to prison law library to four hours per week "clearly permissible").

5. Removal of Court Papers from the U.S. Mail

Finally, petitioner appears to claim an unconstitutional denial of access to the courts based on alleged removal of his submissions from the U.S. Mail. A prisoner claiming an

unconstitutional denial of access to the courts must prove an actual injury with specificity. Rauso, 2000 U.S. Dist. LEXIS 9025, at *40-41. Petitioner fails to allege, much less establish, any actual injury stemming from respondents' alleged removal of his filings or exhibits from the mail. The Court thus concludes that respondents' alleged removal of court papers from the U.S. Mail did not violate petitioner's constitutional right of access to the courts.

D. Equitable Tolling

Petitioner takes the position that the conditions at SCI-Smithfield were such that he was denied access to the courts and, reading his pro se submissions liberally, argues that these conditions warrant equitable tolling of the AEDPA limitations period. For the reasons set forth below, the Court concludes that petitioner has failed to present evidence that the conditions at SCI-Smithfield warrant equitable tolling of the AEDPA limitations period in this case.

1. General Principles

The AEDPA limitations period is subject to equitable tolling when a petitioner has “in some extraordinary way . . . been prevented from asserting his or her rights.” Miller v. New Jersey Dept. of Corrections, 145 F.3d 616, 618 (3d Cir. 1998) (citations omitted). The Third Circuit has set forth three circumstances permitting equitable tolling: (1) if the defendant has actively misled the plaintiff; (2) if the plaintiff has in some extraordinary way been prevented from asserting his rights; or (3) if the plaintiff has timely asserted his rights, but has mistakenly done so in the wrong forum. Jones v. Morton, 195 F.3d 153, 159 (3d Cir. 1999). Equitable tolling is, however, applied sparingly: “[t]he petitioner must show that he or she exercised reasonable diligence in investigating and bringing the claims. Mere excusable neglect is not sufficient.” Miller, 145 F.3d at 618. “In non-capital cases, attorney error, miscalculation,

inadequate research, or other mistakes have not been found to rise to the ‘extraordinary’ circumstances required for equitable tolling.” Fahy v. Horn, 240 F.3d 239, 244 (3d Cir.), cert. denied, 122 S. Ct. 323 (2001).

Denial of access to the courts may constitute a basis for equitable tolling of the AEDPA limitations period if a prisoner demonstrates that prison officials’ conduct prevented him from timely asserting his habeas petition. Maraj v. Gillis, 2005 U.S. Dist. LEXIS 86, at *6 (E.D. Pa. Jan. 4, 2005). However, a prisoner must proffer specific evidence to support such a claim; “the petitioner [must] demonstrate a causal relationship between the extraordinary circumstances on which the claim for equitable tolling rests and the lateness of his filing.” Brown v. Shannon, 322 F.3d 768, 773 (3d Cir. 2003) (quoting Valverde v. Stinson, 224 F.3d 129, 134 (2d Cir. 2000)); see also Tomoney v. Warden, 2002 U.S. Dist. LEXIS 13345, at *15 (E.D. Pa. July 17, 2002) (emphasizing that habeas petitioners seeking equitable tolling based on denial of access to the courts must demonstrate with specificity that the conduct they complain of caused them actual injury).

2. Analysis

Petitioner argues that SCI-Smithfield’s policy of providing only a single paralegal to assist its inmates and provision of limited legal reference assistance warrants tolling of the AEDPA limitations period. The Court disagrees. Petitioner presented no evidence that the level of paralegal assistance available to him at SCI-Smithfield caused him to file his habeas petition more than two months out of time. Maraj, 2005 U.S. Dist. LEXIS 86, at *6. Thus, the Court concludes SCI-Smithfield’s provision of a single paralegal to assist its inmates and the level of legal reference assistance available at SCI-Smithfield do not warrant equitable tolling of the

AEDPA limitations period in this case.

The Court also rejects petitioner's claim that SCI-Smithfield's policy of confiscating one inmate's legal materials when they are found in another inmate's cell denied him access to the courts and warrants equitable tolling of the limitations period. Petitioner fails to provide evidence of any confiscation of his legal materials or that any confiscation of his legal papers actually prevented the timely filing of his habeas petition. Tomoney, 2002 U.S. Dist. LEXIS 13345, at *15. In fact, petitioner states that SCI-Smithfield's policy regarding possession of another inmate's legal materials affected him, if at all, only after he filed the Habeas Petition: “[the alleged confiscation policy] [h]aving a profound effect upon access after the filing of the initial papers to this Court.” (Motion for Reconsideration at 2) (emphasis added). Accordingly, the Court concludes that SCI-Smithfield's policy regarding confiscation of inmates' legal materials does not warrant equitable tolling of the AEDPA limitations period in this case.

Petitioner's claim that SCI-Smithfield's library access policy denied him access to the courts such that equitable tolling is warranted also fails. Petitioner did not provide any evidence that the library access policy prevented him from timely filing his habeas petition. The Court thus concludes that SCI-Smithfield's library access policy is not a basis for equitable tolling of the AEDPA limitations period in this case. Brown, 322 F.3d at 773.

Finally, petitioner did not establish that the alleged removal of any legal materials from the U.S. Mail in any way prevented him from timely filing his Habeas Petition. As a matter of fact, the Habeas Petition was signed and dated by petitioner on April 30, 2004, and was received by the Clerk of Court on May 3, 2004. Accordingly, the Court concludes that petitioner's bare allegation that prison officials removed his filings from the U.S. Mail does not warrant equitable

tolling of the AEDPA limitations period in this case. See Tomoney, 2002 U.S. Dist. LEXIS 13345, at *15.

III. CONCLUSION

For the foregoing reasons, the Court grants petitioner's Motion to Proceed in forma pauperis, approves and adopts Magistrate Judge Caracappa's Report and Recommendation dated January 10, 2005, overrules petitioner's objections to the Report and Recommendation, and dismisses the Habeas Petition with prejudice. The Court also denies petitioner's Motion for Order Restraining Obstruction of Inmate Assistance (Or, Appointment of Counsel By This Court, to Assist Petitioner) and petitioner's alternative request for appointment of counsel.

BY THE COURT:

JAN E. DUBOIS, J.