

*This court ordered Respondents to file an answer by January 16, 2005. Respondents' answer was filed on January 18, 2005. Petitioner's motion for summary judgment was filed on January 24, 2005.*

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

DONALD HARRIS :

CIVIL ACTION

:

v. ::

LEON KING, et al. :

No. 04-4932

**MEMORANDUM AND ORDER**

PETER B. SCUDERI

UNITED STATES MAGISTRATE JUDGE February , 2005

Petitioner has filed a Motion for Summary Judgment (Document #10) based upon Respondents' failure to file a motion for extension of time in which to file a timely answer. Petitioner requests that this court grant his motion for summary judgment, "dismiss [the] case in [P]etitioner's favor" and presumably, strike Respondents' untimely answer. See Pet'r Br. in Supp. of Mot. for Summ. J. Upon review of the record, I conclude that Respondents' failure to file a timely motion for an extension of time is a harmless technical violation and that Petitioner's request for relief is a disproportionate sanction. Furthermore, at this time, Respondents have complied fully with their obligation to answer under Rule 4 of the rules governing petitions for habeas corpus. Consequently, petitioner's motion will be denied. See, e.g., *Saunders v. Taylor*, 1997 WL 129347, at \*1 n. 1 (D. Del. Feb. 27, 1997) (motion for default judgment denied because default is unavailable in habeas corpus proceedings and 2 because respondents fully complied with their obligation to answer habeas petition) (citing *Lemons v. O'Sullivan*, 54 F.3d 357, 364-65 (7th Cir.), cert. denied, 116 S.Ct. 528 (1995); *Goodman v. Keohane*, 663 F.2d 1044, 1047 n.4 (11th Cir. 1981)).

An appropriate order follows.

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**ORDER**

AND NOW, this day of February, 2005, upon consideration of the petitioner's Motion for Summary Judgment (Document #10), IT IS HEREBY ORDERED that the motion is DENIED.

BY THE COURT:

/s

PETER B. SCUDERI

UNITED STATES MAGISTRATE JUDGE