

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DANIEL Z. MALDONADO,

Petitioner,

v.

RICK RAEMISCH, Secretary,
Wisconsin Department of Corrections,

Respondent.

ORDER

10-cv-90-bbc

On September 21, 2010, judgment was entered dismissing petitioner Daniel Z. Maldonado's petition for a writ of habeas corpus under 28 U.S.C. § 2254. Subsequently, petitioner filed two motions for an extension of time to file a motion to alter or amend judgment under Fed. R. Civ. P. 59(e) because he was having medical problems. (Under Rule 59, plaintiff had until October 19, 2010 to file a motion to alter or amend the judgment.) Magistrate Judge Stephen Crocker granted the first motion in whole and the second motion in part, giving petitioner until November 24, 2010 to file his Rule 59 motion. Now petitioner has filed two more motions: one seeking reconsideration of Magistrate Judge Crocker's November 10 order and the other seeking a third extension of time to file a Rule

59 motion.

It is understandable that petitioner believes that he may seek more time to file his Rule 59 motion because the court has already granted him extensions twice. However, doing so was an error. The court has no power to extend a party's time to file a Rule 59 motion. Fed. R. Civ. P. 6(b)(2); Wells v. Ryker; 591 F.3d 562, 564 (7th Cir. 2010) ("an extension of a motion under Fed. R. Civ. P. 59(e) is forbidden by Fed. R. Civ. P. 6(b)(2)"). This means not only that petitioner cannot receive further extensions of time to file a Rule 59 motion, but also that Magistrate Judge Crocker's orders extending petitioner's time have no legal effect. The October 19, 2010 deadline is one that cannot be changed by the court.

Although petitioner cannot file a Rule 59 motion at this time, I will construe the letter he filed on September 27, 2010 in response to the September 21, 2010 order denying his petition as a timely motion to alter or amend the judgment under Rule 59. In that letter, petitioner explains why he believes that the court erred in concluding that he procedurally defaulted on his claims and that he wishes to submit evidence supporting this argument. Finally, he states that, "I write this letter to pronounce to this court that I will be filing a 'motion to reconsider' to this court with this evidence in hopes of reversing or amending this court's judgment." This document puts the court on notice that petitioner wants the court to reconsider the September 21 order and identifies the reason for a motion to reconsider.

However, petitioner has still not submitted a brief or other materials in support of his

Rule 59 motion. In his latest motions, petitioner states that he is in the hospital and taking numerous medications, including narcotics. He asks for an extension of at least 90 days. Although plaintiff's health concerns weigh in favor of granting him an extension, there is no reason to believe that 90 days is necessary, particularly in light of the fact that petitioner has filed three separate motions over the last week, and it appears that all he intends to do in support of his motion is send in documentation showing that he raised his claims in state court. This should not be a particularly difficult task. Accordingly, I will give petitioner until December 2, 2010 to submit his brief and other materials in support of his Rule 59 motion or provide (1) a detailed explanation of what he plans to include in his brief and supporting materials and (2) why his current ill health keeps him from completing this task. I will deny petitioner's motion for reconsideration of Magistrate Judge Crocker's November 10 order as moot.

ORDER

IT IS ORDERED that

1. The clerk of court is directed to redocket petitioner Daniel Z. Maldonado's September 27, 2010 letter to the court, dkt. #36, as a motion to alter or amend judgment under Fed. R. Civ. P. 59(e).
2. Petitioner's motion for an extension of time to submit his brief and materials in

support of his motion to alter or amend judgment, dkt. #42, is GRANTED IN PART. He will have until December 2, 2010 to submit these materials or otherwise explain why he cannot do so as stated in the order above.

3. Petitioner's motion for reconsideration of Magistrate Judge Crocker's November 10 order, dkt. #41, is DENIED as moot.

Entered this 18th day of November, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge