IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

LERON WILBORN,

Plaintiff,

vs. **No. 10-0423-DRH**

RANDY PFISTER
Defendant.

ORDER

HERNDON, Chief Judge:

Pending before the Court is petitioner's February 27, 2013, motion for relief from a void judgment (Doc. 27). The Court construes this motion as second/amended motion to alter or amend the January 8, 2013 Orders and Judgments. Specifically, Wilborn moves the Court to amend or alter its January 8, 2013 Order and Judgment denying his habeas corpus petition and dismissing with prejudice his cause of action (Docs. 22 & 23). Wilborn contends that he did not receive "notice with a Magistrate Judge Donald G. Wilkerson's Report and Recommendation (Doc. 20)" and, therefore, did not have an opportunity to file timely objections to the Report and Recommendation ("The Report"). As noted, this is the second time petitioner is seeking the same relief, however, this time petitioner has submitted additional documentation in support of motion. Based on the following, the Court grants the motion.

In the Court's January 29, 2013 Amended Memorandum and Order the Court found:

> Clearly, the record reflects that both the Report and the Notice were sent to the address, Pontiac Correctional Center, that petitioner provided in his December 14, 2011 change of address (Doc. 19). Specifically, the notation in the Court's record, placed there by the Clerk, is that the Order and Notice were sent to the petitioner by electronic means to Pontiac Correctional Center. The Court finds that both the Report and Notice were properly sent to petitioner as provided by the procedures set forth in the November 27, 2012 General Order: No. 2012-1, In Re: Procedural Rules for Electronic Filing Program. The Court does not accept his assertion that he did not receive the Order and Notice.

(Doc. 26, ps. 3-4). Again, petitioner contends that he did not receive notice of the Report because he is an incarcerated person who does not receive notices of electronic mail directly. Specifically, that neither Michelle R. Clark nor Mark Spencer at Pontiac Correctional Center have provided petitioner with a notice of the Report. However, in this motion, unlike the last motion, petitioner submitted a counseling memorandum from Kathleen M. Bruner, executive secretary, stating: "Mark Spencer responded and advised he had already advised you verbally that he did not receive any 'report and recommendation' from the court. He will be sending you a memo." (Doc. 27, p. 4). He also submitted a memorandum from Mark Spencer, Sr. Paralegal, Office of Adult Education and Vocational Services, stating: "This memorandum is to confirm our conversation in which I told you that the library did not receive by the e-filing system the magistrate's recommendation." (Doc. 27, p. 7). While the Court is unsure as to why/how petitioner did not receive either the Report or the notice, the Court finds that this

additional documentation indicates that the procedures with the e-fling system did not work properly in this case. Thus, the Court finds that petitioner is entitled to the relief he requests.

Accordingly, the Court **GRANTS** petitioner's motion (Doc. 27). The Court **VACATES** the Court's January 8, 2013 Order adopting the Report (Doc. 22) and the January 8, 2013 Judgment (Doc. 23). The Court **DIRECTS** petitioner to file objections to the Report on or before **August 15, 2013**. Further, the Court **DENIES as moot** the corrected motion for judgment on the pleadings (Doc. 29) and the motion for status check (Doc. 33). Further, the Court **DIRECTS** the Clerk of the Court to send a paper copy of this Order via regular mail to petitioner.

IT IS SO ORDERED.

Signed this 30th day of July, 2013.

Chief Judge
United States District Court