

least one federal circuit court has concluded, however, that Rule 4 of the Rules Governing Section 2254 Cases, which permits the Court to dismiss petitions that plainly show no relief is available, is inconsistent with the requirement in the Federal Rules of Civil Procedure that an affirmative defense must be plead. *Kiser v. Johnson*, 163 F.3d 326, 329 (5th Cir. 1999); Fed. R. Civ. P. 8(c). In such a case, the Rules Governing Section 2254 Cases apply, and the Court may dismiss on the basis of the statute of limitations during its initial review of the Petition. *Id.*; Rule 11, 28 U.S.C. foll. § 2254. I agree with the Fifth Circuit that to apply Federal Rule 8(c) to habeas petitions that are clearly untimely would substantially impair the Court's ability to weed out meritless habeas petitions. *Kiser*, 163 F.3d at 328. Accordingly, I hereby recommend the Petition for Writ of Habeas Corpus be summarily DISMISSED, and the Writ DENIED.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Margaret J. Kravchuk
United States Magistrate Judge

Dated on: April 27, 2000

ADMIN

U.S. District Court
District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 00-CV-72

EDWARDS v. HANSEN

Filed: 04/17/00

Assigned to: JUDGE D. BROCK HORNBY

Referred to: MAG. JUDGE MARGARET J. KRAVCHUK

Demand: \$0,000

Nature of Suit: 530

Lead Docket: None

Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

STANLEY C EDWARDS
plaintiff

ROBERT E. SANDY, ESQ.
[COR LD NTC]
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v.

ERIC HANSEN, Superintendent of
Charleston Correctional
Facility
defendant