

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GEDEON TIRADO,

Petitioner,

v.

Case No. 8:17-cv-1373-T-27JSS

SECRETARY, DEPARTMENT
OF CORRECTIONS,

Respondent.

_____ /

ORDER

Before the Court are Petitioner's Motion for Summary Judgment/Final Judgment (Dkt. 9), which the Court liberally construes as a motion for default judgment under Rule 55, Federal Rules of Criminal Procedure, and Respondent's Motion for Enlargement of Time to File Response to Order and Response in Opposition to Motion for Summary Judgment (Dkt. 10).

Under Rule 55, default judgment is available "[w]hen a party. . .has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." Fed. R. Civ. P. 55(a). Respondent, however, is not required to respond to the petition until properly served with the petition. *See Varnes v. Local 91, Glass Bottle Blowers Ass'n*, 674 F.2d 1365, 1379–80 (11th Cir. 1982) (holding that no default could issue on an amended complaint because it was not properly served). Counsel for Respondent indicates that neither the Department of Corrections nor the Office of the Attorney General received a copy of the petition or the Court's March 7, 2018 order to show cause. (See Dkt. 10.) Default judgment, therefore, is not available to Petitioner under these circumstances.

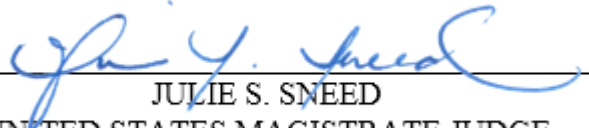
Moreover, neither default nor summary judgment is appropriate due to the failure to

timely respond to a petition for writ of habeas corpus. *See, e.g., Aziz v. Leferve*, 830 F.2d 184, 187 (11th Cir. 1987) (finding that a default judgment is not contemplated in habeas corpus cases); *Goodman v. Keohane*, 663 F.2d 1044, 1048 n.4 (11th Cir. 1981) (rejecting petitioner's argument that the government's tardiness in responding to his petition entitled him to habeas relief).

Accordingly, it is **ORDERED** that:

1. Petitioner's Motion for Summary Judgment/Final Judgment (Dkt. 9) is **DENIED**.
2. Respondent's Motion for Enlargement of Time to File Response to Order and Response in Opposition to Motion for Summary Judgment (Dkt. 10) is **GRANTED**. Respondent shall respond to the petition with forty-five (45) days from the date of this Order.

DONE AND ORDERED at Tampa, Florida, on August 6, 2018.



JULIE S. SNEED
UNITED STATES MAGISTRATE JUDGE

SA: sfc

Copies to: Petitioner *pro se*; Counsel of Record