

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

LEBORNE POWELL,)	
)	
Plaintiff/Petitioner)	
On Review,)	
)	CASE NO. ST-15-SM-163
vs.)	CASE NO. ST-16-RV-1
)	
CAROLYN WYLLIS a/k/a CAREY WILLIS,)	
)	
Defendant/Respondent)	
On Review.)	
)	

MEMORANDUM OPINION

Pending before the Court is Petitioner's petition for review challenging a judgment issued by the Magistrate. For the following reasons, Petitioner's petition will be dismissed with prejudice for failure to prosecute.

FACTUAL AND PROCEDURAL HISTORY

On February 12, 2016, Petitioner filed his petition for review. The Clerk of Court issued a letter to Petitioner on February 16, 2016, instructing him concerning the briefing schedule and fees for this appeal. On July 25, 2016, the Court ordered Petitioner to file an appellate brief by August 12, 2016, failing which the petition would be dismissed for failure to prosecute. The Court granted Petitioner an extension on August 11, 2016, permitting Petitioner to file a brief by August 31, 2016. Petitioner requested an additional ten day extension on September 7, 2016. To date, Petitioner has failed to file an appellate brief in support of his petition.

STANDARD

The Appellate Division of the Superior Court “has jurisdiction to review judgments and orders issued by a Magistrate, as a result of the Magistrate[] exercising [his or her] original jurisdiction as provided for at 4 V.I.C. § 123.”¹ The Superior Court reviews a Magistrate’s factual determinations for “clear error” and legal findings are “afforded plenary review.”²

ANALYSIS

V.I. Super. Ct. Rule 322.1(i)(g)(i) establishes that “if a petitioner fails to file [a] brief within the time provided by these rules, or within the time otherwise established by the Court, the petition for review may be dismissed for want of prosecution, on motion by the respondent or by the Court, sua sponte.” Petitioner has failed to file an appellate brief despite the Court giving him two additional months to file his brief. Any additional extension of time “would reward [Petitioner’s] ... failure to comply with this Court’s orders.”³ As a result, Petitioner’s petition will be dismissed with prejudice for failure to prosecute.

An Order consistent with this Opinion shall follow.

Dated: October 12, 2016

ATTEST: Estrella H. George
Acting Clerk of Court / /

by: Donna D. Donovan
Donna D. Donovan
Court Clerk Supervisor 10/17/2016


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

¹ *Payne v. Lehtonen*, 55 V.I. 286, 289 (Sup. Ct. 2011).

² Super. Ct. R. 322.3(b). Plenary review is a full or complete review. See Black’s Law Dictionary, Eighth Edition.

³ See *Prosser v. Springel*, 2013 U.S. Dist. LEXIS 142911, *16, 2013 WL 5432316 (D.V.I. Sept. 27, 2013).