

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

JOHN L. THOMAS,
Petitioner,

v.

**CIVIL ACTION NO. 1:05CV14
(Judge Broadwater)**

WILLIAM FOX, Warden,
St. Mary's Correctional Center,
Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day the above styled case came before the court for consideration of the Report and Recommendation of Magistrate Judge John S. Kaull, dated August 22, 2005, and the plaintiff's objections thereto filed on August 31, 2005. In the interests of justice and in accordance with 28 U.S.C. § 636(b)(1), the Court has conducted a *de novo* review.

The Court, after reviewing the above, is of the opinion that the Magistrate Judge's Report and Recommendation should be and is hereby ORDERED adopted. A State court's determinations as to whether petitioner should be granted credit for time served on home confinement is a State law question and does not rise to the level of a Federal constitutional violation actionable under 28 U.S.C. §2254. Estelle v. McGuire, 502 U.S. 62 (1991).

Therefore, the court ORDERS that petitioner's §2254 petition be DISMISSED WITH PREJUDICE. Petitioner's Application for Leave to Proceed Without Prepayment of Fees is DENIED as MOOT because the petitioner paid the filing fee. This matter is further ordered STRICKEN from the active docket of this court.

It is so ORDERED.

Dated this 4th day of January 2006.

W. Craig Broadwater

W. CRAIG BROADWATER
UNITED STATES DISTRICT JUDGE