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

DONALD TORRELL WASHINGTON,

Petitioner,

v.

CIVIL ACTION NO. 3:08-CV-98
CRIMINAL ACTION NO. 3:06-CR-22
(BAILEY)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION
THAT § 2255 BE DENIED

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. On June 12, 2008, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on August 26, 2008 [Crim. Doc. 80 / Civ. Doc. 6]. In that filing, the magistrate judge recommended that this Court deny the petitioner's application under 28 U.S.C. § 2255 [Crim. Doc. 64/ Civ. Doc. 1] because the petitioner knowingly, intelligently, and voluntarily waived the right to collaterally attack the conviction. Accordingly, the magistrate recommended that petitioner's Motion to Compel [Crim. Doc. 72] and Motion to Appoint Counsel [Crim. Doc. 70/ Civ. Doc. 5] be denied.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the

factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984). Objections to Magistrate Judge Seibert's R & R were due within ten (10) days of being served with a copy, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that the defendant received the R & R on September 8, 2008. [Crim. Doc. 81]. Petitioner filed a motion for extension of time to file objections [Crim. Doc. 82] and the Court granted petitioner until October 10, 2008 to file objections [Crim. Doc. 84]. Neither party filed objections to the R & R. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's **Report and Recommendation** [Crim. Doc. 80 / Civ. Doc. 6] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the Court hereby **DENIES** the petitioner's application under 28 U.S.C. § 2255 [Crim. Doc. 64 / Civ. Doc. 1], and **DISMISSES it with prejudice**. Additionally, the petitioner's motions to appoint counsel [Crim. Doc. 70/ Civ. Doc. 5] and to compel [Crim. Doc. 72] are **DENIED**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to mail a true copy to the *pro se* petitioner.

DATED: November 5, 2008.

JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE