

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

FILED  
AUG 26 2008  
U.S. DISTRICT COURT  
ELKINS WV 26241

STEPHEN LUCI,  
  
Petitioner,

vs.

Civil Action No. 3:07 CV 11  
(Maxwell)

DAVID BALLARD, WARDEN,  
MOUNT OLIVE CORRECTIONAL CENTER,  
  
Respondent.

ORDER

It will be remembered that the above-styled civil action was instituted on January 22, 2007, when *pro se* Petitioner Stephen Luci filed a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody.

It will further be remembered that the above-styled civil action was referred to United States Magistrate Judge James E. Seibert for initial review and report and recommendation, pursuant to Rule 83.09 of the Local Rules of Prisoner Litigation Procedure.

By Order entered August 8, 2007, Magistrate Judge Seibert indicated that he had conducted a preliminary review of the file and had determined that summary dismissal was not appropriate at that time. Accordingly, Magistrate Judge Seibert's August 8, 2007, Order directed the Respondent to show cause why the Petitioner's § 2254 Petition should not be granted.

The Respondent's Answer was filed on October 4, 2007, along with a Motion For Summary Judgment and a Memorandum of Law in Support thereof.

The Petitioner's Objection To Summary Dismissal and Memorandum In Support

thereof were filed on November 2, 2007.

On May 27, 2008, United States Magistrate Judge James E. Seibert filed a Report And Recommendation in the above-styled civil action, wherein he recommended that the Respondent's Motion For Summary Judgment be granted and that the Petitioner's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody be denied with prejudice and dismissed from the Court's docket.

Magistrate Judge Seibert's Report And Recommendation expressly advised the parties, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections to said Report And Recommendation within ten days after being served with a copy of the same.

On June 6, 2008, the Petitioner filed his Objection To Report And Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of Magistrate Judge Seibert'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 Magistrate Judge Seibert 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 (4<sup>th</sup> Cir. 1980); United States v. Schronce, 727 F.2d 91, 94 (4<sup>th</sup> Cir. 1984). As previously noted, the Petitioner timely filed his Objection To Report And Recommendation on June 6, 2008. Accordingly, this Court has conducted a *de novo* review only as to the portions of the Report And Recommendation to which the Petitioner objected. The remaining portions of the Report And Recommendation to which the Petitioner did not

object were reviewed for clear error.

Upon examination of Magistrate Judge Seibert's Report And Recommendation, it appears to the Court that the issues raised by the Petitioner in his Objection were thoroughly considered by Magistrate Judge Seibert in his Report And Recommendation. Moreover, the Court is of the opinion that Magistrate Judge Seibert's Report And Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled civil action. Therefore, it is

**ORDERED** that the Report And Recommendation entered by United States Magistrate Judge James E. Seibert on May 27, 2008, (Docket No. 32), be, and the same hereby is, **ACCEPTED** in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the Respondent's Motion For Summary Judgment (Docket No. 25) be, and the same is hereby, **GRANTED**. It is further

**ORDERED** that the Petitioner's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Docket No. 1), be, and the same is hereby, **DENIED** and **DISMISSED** with prejudice.

It is further

**ORDERED** that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate

Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

The Clerk of Court is directed to transmit copies of this Order to the Petitioner and to counsel of record.

ENTER: August 26<sup>th</sup>, 2008

  
United States District Judge