

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

BRANDON JOHNSON,

Petitioner,

v.

//

CIVIL ACTION NO. 1:08CV164
(Judge Keeley)

TERESA WAID, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On August 1, 2008, pro se petitioner, Brandon Johnson ("Johnson"), filed a petition pursuant to 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody. The Court referred this matter to United States Magistrate Judge John S. Kaul for initial screening and a report and recommendation in accordance with Local Rule of Prisoner Litigation 83.13.

On October 3, 2008, the respondent, Warden Teresa Waid ("Waid"), filed a response to the petition and a motion to dismiss it as untimely. Three days later, the Court issued a notice pursuant to Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975), advising Johnson of his right to file a response to the dispositive motion. No response has been filed.

On April 8, 2009, Magistrate Judge Kaul issued an Opinion and Report and Recommendation ("R&R"), recommending that Waid's motion to dismiss be granted, Johnson's motion under § 2254 be denied as untimely filed, and the case be dismissed with prejudice. He found that the Anti-Terrorism and Effective Death Penalty Act of 1996

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established a one-year statute of limitation period within which a federal habeas corpus petition must be filed. 28 U.S.C. § 2244(d). As it applies to this case, that one year period began to run on the date that Johnson's conviction and sentence became final, which occurred on September 4, 2003. Because this petition was filed on August 1, 2008, more than four years after the conviction and sentence became final, Magistrate Judge Kaulf therefore concluded that the petition is untimely and should be dismissed.

The Report and Recommendation also specifically warned the parties that failure to object to the recommendation would result in the waiver of any appellate rights on this issue. No objections were filed.¹

Therefore, the Court **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 24), **GRANTS** the respondent's Motion to Dismiss (dkt. no. 20), **DENIES** Johnson's § 2254 Petition for a Writ of Habeas Corpus by a Person in State Custody and **ORDERS** the case **DISMISSED WITH PREJUDICE** and stricken from the Court's docket.

¹ The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

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The Court directs the Clerk to transmit copies of this Order to the pro se petitioner, certified mail, return receipt requested and to counsel of record.

Dated: April 28, 2009

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE