

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

**JAMES PLAISIR,**

Petitioner,

v.

**CIVIL ACTION NO. 3:10-CV-41  
CRIMINAL ACTION NO. 3:09-CR-15  
(BAILEY)**

**UNITED STATES OF AMERICA,**

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. By Local Rule, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R & R on April 13, 2010 [Crim. Doc. 60 / Civ. Doc. 5]. In that filing, the magistrate judge recommended that this Court dismiss this § 2255 petition [Crim. Doc. 54 / Civ. Doc. 1] as premature.

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*

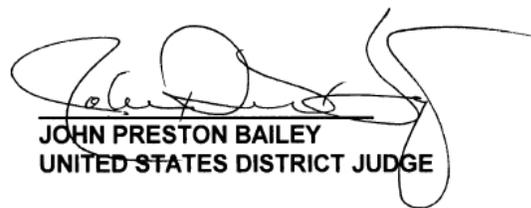
review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Kaul's R & R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on April 14, 2010. See Crim. Doc. 61. To date, no objections have been filed. 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. 60 / Civ. Doc. 5]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. As such, this Court hereby **DENIES and DISMISSES without prejudice** the petitioner's § 2255 petition **[Crim. Doc. 54 / Civ. Doc. 1]**. Therefore, this matter is hereby **ORDERED STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

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

**DATED:** May 14, 2010.

  
JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE