

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

JOHN HOWARD SHIFFLETT,

Petitioner,

v.

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CIVIL ACTION NO. 1:11CV128  
(Judge Keeley)

STATE OF WEST VIRGINIA

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On August 10, 2011, the pro se petitioner, John Howard Shiflett ("Shiflett"), filed a petition pursuant to 28 U.S.C. § 2254. The Court referred this matter to United States Magistrate Judge John S. Kaul for initial screening and a report and recommendation in accordance with LR PL P 2. Magistrate Judge Kaul determined that the petition appeared to be untimely. The Court issued Shiflett a Hill v. Brixton notice, to which Shiflett did not respond.

On December 21, 2011, Magistrate Judge Kaul issued an Opinion and Report and Recommendation ("R&R"), in which he recommended that Shiflett's § 2254 be denied and dismissed with prejudice for two reasons. First, the magistrate judge determined that Shiflett's petition was untimely under 28 U.S.C. § 2244(d) because Shiflett filed his petition more than one year after the date on which his state court judgment became final. See § 2244(d)(1)(A). Second, the magistrate judge concluded that the Court lacked jurisdiction over Shiflett's petition because Shiflett was not in custody when he

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filed his petition. See 28 U.S.C. §2254(a).

The R&R also specifically warned Shiflett that his failure to object to the recommendation would result in the waiver of any appellate rights he might otherwise have on this issue. The parties did not file any objections.\* Consequently, the Court **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 9), **DENIES** the § 2254 petition (dkt. no 1) and **ORDERS** that this case be **DISMISSED WITH PREJUDICE** and stricken from the Court's docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: October 3, 2012.

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

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\* 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).