

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

CLINTON HOWARD,

Petitioner,

v.

**CIVIL ACTION NO. 5:12-CV-34
(BAILEY)**

TERRY O'BRIEN,

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 James E. Seibert. By Local Rule, 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 June 20, 2012 [Doc. 20]. In that filing, the magistrate judge recommended that this Court grant the Respondent's Motion to Dismiss, or, in the Alternative, Motion for Summary Judgment [Doc. 15], deny the petitioner's Cross Motion for Summary Judgment [Doc. 19], and deny and dismiss with prejudice the petitioner's section 2241 habeas corpus petition [Doc. 1] [See Doc. 20 at 11].

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 Seibert'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 sheet reflects that service was accepted on June 22, 2012 [Doc. 21]. To date, no objections have been filed.

Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's Report and Recommendation [**Doc. 20**] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. As such, this Court hereby **GRANTS** Respondent's Motion to Dismiss, or, in the Alternative, Motion for Summary Judgment [**Doc. 15**], **DENIES** the petitioner's Cross Motion for Summary Judgment [**Doc. 19**], and **DENIES and DISMISSES with prejudice** the petitioner's Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 [**Doc. 1**]. Therefore, this matter is hereby **ORDERED STRICKEN** from the active docket of this Court. The Clerk is directed to enter a separate judgment in favor of the respondent.

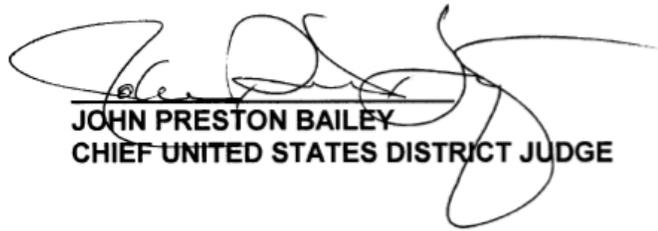
As a final matter, although the petitioner has waived his right to appeal this Order, this Court finds that the petitioner has not made the requisite "substantial showing of the denial of a constitutional right " for a certificate of appealability; accordingly, this Court hereby **DENIES** a certificate of appealability to the extent that the petitioner might seek one

from this Court. See 28 U.S.C. § 2253(c)(2).

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: July 19, 2012.



JOHN PRESTON BAILEY
CHIEF UNITED STATES DISTRICT JUDGE