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

CHRISTOPHER WAYNE WILLIAMS,

Petitioner,

v.

CIVIL ACTION NO. 2:14-CV-37
CRIM. ACTION NO. 2:13-CR-10
(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. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R&R"). On February 12, 2015, an evidentiary hearing was held on whether the petitioner's counsel failed to file an appeal in spite of the petitioner allegedly requesting an appeal be filed. [Doc. 69]. Magistrate Judge Kaull filed his R&R on February 17, 2015 [Doc. 71], recommending that petitioner's claim that his counsel failed to file an appeal be denied and dismissed with prejudice. On February 18, 2015, the Government filed a Response noting no objections to the R&R. [Doc. 73].

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 timely 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 Kaull's R&R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. No objections have been filed. Accordingly, this Court will review the R&R for clear error.

Upon careful review of the above, it is the opinion of this Court that the **Report and Recommendation [Civ. Doc. 13, Crim. Doc. 71]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court **ORDERS** that ground Three A— the petitioner's claim that counsel failed to file an appeal—of the petitioner's § 2255 petition **[Civ. Doc. 1, Crim. Doc. 44]** be **DENIED** and **DISMISSED WITH PREJUDICE**.[1] This Court further **ORDERS** that the petitioner's motion for default judgment **[Doc. 53]** and motion to amend **[Doc. 58]** should be, and are, hereby **DENIED**. This Court **DIRECTS** the Clerk to enter judgment in favor of the respondent and to **STRIKE** this case from the active docket of this Court.

As a final matter, upon an independent review of the record, this Court hereby **DENIES** a certificate of appealability, finding that Mr. Williams has failed to make "a

[1] This Court notes that all other grounds contained in the § 2255 petition were previously denied by this Court's February 13, 2015, Order. [Civ. Doc. 14, Crim. Doc. 72].

substantial showing of the denial of a constitutional right." 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 petitioner.

DATED: March 11, 2015.

JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE