

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

LEONARD SHARP,

Plaintiff,

v.

CIVIL ACTION NO. 1:16-00020

B.J. JOHNSON, Warden
FCI McDowell,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order, this action was referred to United States Magistrate Judge Cheryl A. Eifert for submission of findings and recommendations regarding disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Judge Eifert submitted to the court her Findings and Recommendation ("PF&R") on October 4, 2016, in which she recommended that the District Court deny plaintiff's: 1) petition under 28 U.S.C. § 2241; 2) motion to amend/supplement the petition; 3) motion for emergency ruling on the petition; 4) motion to seal; 5) motion to expedite; and 6) motion for disposition. Magistrate Judge Eifert also recommended that the district court grant defendant's request for dismissal of this action and that the court dismiss this matter with prejudice and that it be removed from the court's docket.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge Eifert's

Findings and Recommendation. The failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

The parties failed to file any objections to the Magistrate Judge's Findings and Recommendation within the seventeen-day period. Having reviewed the Findings and Recommendation filed by Magistrate Judge Eifert, the court adopts the findings and recommendations contained therein. Accordingly, the court hereby:

- 1) **DENIES** plaintiff's petition under 28 U.S.C. § 2241;
- 2) **DENIES** plaintiff's motion to amend/supplement the petition (ECF No. 16);
- 3) **DENIES** plaintiff's motion for emergency ruling on the petition (ECF No. 17);
- 4) **DENIES** plaintiff's motion to seal (ECF No. 18);
- 5) **DENIES** plaintiff's motion to expedite (ECF No. 21);
- 6) **DENIES** plaintiff's motion for disposition (ECF No. 22);
- 7) **GRANTS** defendant's request for dismissal of this action (ECF No. 12);
- 8) **DISMISSES** this action with prejudice; and
- 9) **DIRECTS** the Clerk to remove this case from the court's active docket.

Additionally, the court has considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly, the court **DENIES** a certificate of appealability.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to plaintiff and counsel of record.

IT IS SO ORDERED this 18th day of January, 2017.

ENTER:



David A. Faber

Senior United States District Judge