

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

QUINCY JAY PLESSY

PETITIONER

v.

Case No. 2:12-CV-02118

RAY HOBBS, Director, Arkansas Department
of Correction

RESPONDENT

ORDER

Currently before the Court is the Report and Recommendations (Doc. 9) filed in this case on September 24, 2012, by the Honorable James R. Marschewski, Chief United States Magistrate Judge for the Western District of Arkansas. Also before the Court are Petitioner's timely filed objections (Doc. 12).

The Court has reviewed this case and, being well and sufficiently advised, finds as follows: Petitioner's objections offer neither law nor fact requiring departure from the Report and Recommendations. Petitioner argues that the instant matter should not be stayed pending the outcome of his Rule 37 appeal in Arkansas state court regarding his ineffective assistance of counsel claims. Petitioner contends that his ineffective assistance of counsel claims will become procedurally barred for not complying with state court procedure in that he failed to timely file his brief with the Arkansas Supreme Court Clerk after he filed a motion for extension of time "which was denied without response from the Court." (Doc. 12, p. 2). However, according to the docket content info for Petitioner's Rule 37 case, the case is still pending before the Arkansas Court of Appeals, with a motion for extension of time for Petitioner to file his brief still awaiting action. (Doc. 9-1).¹ Therefore, as stated by the Magistrate, Petitioner's unexhausted claims remain pending

¹ The undersigned checked the docket content info of Petitioner's Rule 37 case as of December 3, 2012 and notes that the status remains as reflected in Doc. 9-1.

before the Arkansas Court of Appeals, and a decision should be rendered in due course. Given the pendency of Petitioner's Rule 37 action, it is not clear that Petitioner's unexhausted claims will become procedurally barred.

The Report and Recommendation is proper and should be and hereby is **ADOPTED IN ITS ENTIRETY**. Accordingly, for the reasons stated in the Magistrate Judge's Report and Recommendations, IT IS ORDERED that Respondent's Motion to Dismiss (Doc. 7) is DENIED.

IT IS FURTHER ORDERED that all action on the current Petition is STAYED and held in ABEYANCE until the Arkansas Court of Appeals rules on the Petitioner's current Rule 37 appeal.

IT IS FURTHER ORDERED that Respondent's Response to the Petition is due 30 days after the Arkansas Court of Appeals renders its decision.

IT IS SO ORDERED this 3rd day of December, 2012.

P. K. Holmes, III

P.K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE