

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 08-23251-CIV-LENARD/WHITE

**ORRETT S. KERR,**

Petitioner,

vs.

**STATE OF FLORIDA,**

Respondent.

/

**ORDER ADOPTING REPORT & RECOMMENDATION OF MAGISTRATE  
JUDGE (D.E. 16), DISMISSING PETITION WITHOUT PREJUDICE, AND  
DENYING PETITIONER'S MOTION TO STAY (D.E. 17)**

**THIS CAUSE** is before the Court on the Report and Recommendation of the Magistrate Judge (“Report,” D.E. 16), issued on February 10, 2009, recommending that this Petition be dismissed without prejudice, except as to any application of the federal statute of limitations or other federal procedural bar, for lack of exhaustion. Therein, Petitioner was provided ten (10) days to file objections to the Report. To date, Petitioner has not filed any objections to the Report. Failure to timely file objections shall bar parties from attacking on appeal the factual findings contained in the report. See Resolution Trust Corp. v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993). However, realizing his failure to exhaust his state court remedies, Petitioner filed on February 18, 2009, a Motion to Stay (D.E. 17) the habeas petition pending exhaustion at the state level. The Court agrees with the Magistrate Judge’s finding that “[s]ince the instant proceeding has been timely filed and the petitioner has sufficient time to return to this Court within the limitations period after his

state court remedies have been fully and properly exhausted on any and all claims he might want to raise challenging his convictions and sentences, a dismissal rather than a stay of the instant proceeding is the appropriate course of action.” (See Report at 9-10; Rhines v. Weber, 544 U.S. 269 (2005).) Therefore, after an independent review of the Report and record, it is hereby:

**ORDERED AND ADJUDGED** that:

1. The Report of the Magistrate Judge (D.E. 16) is **ADOPTED**.
2. Petitioner’s Petition for Writ of Habeas Corpus (D.E. 1), filed on or about November 24, 2008, is **DISMISSED WITHOUT PREJUDICE**, except as to the any application of the federal statute of limitations or other federal procedural bar that may apply.
3. Petitioner’s Motion to Stay (D.E. 17) these proceedings pending exhaustion of state court remedies is **DENIED**.
4. This case is **CLOSED**.

**DONE AND ORDERED** in Chambers at Miami, Florida this 14th day of April, 2009.

  
**JOAN A. LENARD**  
**UNITED STATES DISTRICT JUDGE**