

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

JASON PRICE WEAVER,

Petitioner,

v.

CIVIL ACTION NO. 1:14-027510

BART MASTERS, Warden,

Respondent.

MEMORANDUM OPINION AND ORDER

By Standing Order, this matter was referred to United States Magistrate Judge Omar J. Aboulhosn for submission of proposed findings and recommendations ("PF&R") for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). (Doc. No. 3).

Magistrate Judge Aboulhosn submitted to the court his PF&R on June 21, 2016, in which he recommended that the Court construe Petitioner's Application for Writ of Habeas Corpus by a Person in Federal Custody Pursuant to 28 U.S.C. § 2241 (Doc. No. 1) as a Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255, and transfer it to the United States District Court for the Southern District of Florida. Magistrate Judge Aboulhosn notified Petitioner that if he intended to file a Johnson claim, he had to do so before June 26, 2016. Petitioner was further notified that nothing in the PF&R, or any Objections

thereto, could change or extend this deadline. Petitioner had to file a Section 2255 Motion based on a Johnson claim with the Southern District of Florida before June 26, 2016. On July 8, 2016, Petitioner filed his Response to the PF&R asserting his Johnson v. United States, 135 S.Ct. 2551(2015), claim. (Doc. No. 10).

In accordance with 28 U.S.C. § 636(b), the parties were allotted seventeen days in which to file any objections to Magistrate Judge Aboulhosn's PF&R. The failure of any party to file such objections within the time allotted 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). Neither party filed any objections to the Magistrate Judge's PF&R within the required time period.

Accordingly, the court adopts Magistrate Judge Aboulhosn's PF&R as follows:

- 1) Petitioner's Application for Writ of Habeas Corpus by a Person in Federal Custody Pursuant to 28 U.S.C. § 2241 (Doc. No. 1) is **CONSTRUED** as a Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255; and

2) Petitioner's Application for Writ of Habeas Corpus is **TRANSFERRED** to the United States District Court for the Southern District of Florida.¹

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to counsel of record, to Petitioner, and to the Clerk of the United States District Court for the Southern District of Florida.

It is **SO ORDERED** this 1st day of February, 2017.

ENTER:



David A. Faber

Senior United States District Judge

¹ In his response to the PF&R (Doc. No. 10), Petitioner asks the court to add this action to the § 2255 motion he recently filed with the United States Court of Appeals for the Eleventh Circuit. This request is best left to the determination of the United States District Court for the Southern District of Florida.