

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

TAVUS BATTEY,	:	
	:	
Petitioner,	:	
	:	
v.	:	CASE NO.: 1:09-CV-125 (WLS)
	:	
SUPERINTENDENT CRAWFORD,	:	
	:	
Respondent.	:	
_____	:	

ORDER

Before the Court is a Report and Recommendation from United States Magistrate Judge Thomas Q. Langstaff, filed June 7, 2010. (Doc. 14). It is recommended that Respondent’s Motion to Dismiss Petition for Lack of Exhaustion (Doc. 8) be granted and that the Petition for Writ of Habeas Corpus (Doc. 2) in the above-captioned matter be dismissed without prejudice. (Doc. 14 at 3). It is additionally recommended that Petitioner’s Motion for Evidentiary Hearing (Doc. 11) be denied. (Doc. 14 at 3). Petitioner timely filed an Objection. (Doc. 15).

For the following reasons, the objections set forth in Petitioner’s Objection (Doc. 15) are **OVERRULED** and United States Magistrate Judge Langstaff’s June 7, 2010 Report and Recommendation (Doc. 14) is **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein together with the reasons stated and conclusions reached herein. Accordingly, Respondent’s Motion to Dismiss Petition for Lack of Exhaustion (Doc. 8) is **GRANTED**; Petitioner’s Motion for Evidentiary Hearing (Doc. 11) is **DENIED**; and Petitioner’s Petition for Writ of Habeas Corpus (Doc. 2) is **DISMISSED WITHOUT PREJUDICE**.

Respondent's Motion to Dismiss Petition for Lack of Exhaustion (Doc. 8) asserts that Petitioner failed to exhaust his available administrative remedies as required under the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), because Petitioner did not file a State habeas corpus petition prior to filing the instant Federal habeas corpus petition. Respondent represents that "Petitioner had and still has available state remedies in which to raise his claims in the state courts." (Doc. 8-2 at 4). Respondent thus argues that dismissal is mandated. In his Response (Doc. 13), Petitioner asserts that he had made several requests for a State habeas corpus application form to various State judicial bodies, "but was not successful [in] receiving an application." (Doc. 13 at 2). Judge Langstaff's Report and Recommendation recommends dismissal of the Petition for failure to exhaust after clearly giving due consideration to both Respondent's arguments contained in the Motion to Dismiss (Doc. 8) and Petitioner's factual assertions contained in the Response (Doc. 13). (*See* Doc. 14 at 1-3).

Petitioner's Objection (Doc. 15) attempts to add facts not previously asserted in his Response (Doc. 13), stating that he had also attempted to obtain a State habeas corpus application form from the Federal courts, but that "I ... could never get the appropriate form needed to file a state habeas corpus [petition]." Even assuming these facts were not waived for failure to raise them in the Response, the Court finds them unavailing. Just because Petitioner was not able to obtain a State habeas corpus application form from various State and Federal sources does not mean that such was made unavailable to him. That Petitioner in his Objection (Doc. 15) states that he "object[s] [to] the exhaustion requirements [of] *Picard v. Connor*, ... 404 U.S. at 275" is inapposite. An opinion handed down by the United States Supreme Court is binding law upon this Court and must be followed regardless of Petitioner's predilections. Finally, although Petitioner's Objection (Doc. 15) again prays for an evidentiary hearing, the

Court agrees with Judge Langstaff that there is no reason to grant one. The Court finds that Petitioner's Objection (Doc. 15) fails to rebut the legally sound Report and Recommendation of Judge Langstaff.

For the foregoing reasons, the objections set forth in Petitioner's Objection (Doc. 15) are **OVERRULED** and United States Magistrate Judge Langstaff's June 7, 2010 Report and Recommendation (Doc. 14) is **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein together with the reasons stated and conclusions reached herein. Accordingly, Respondent's Motion to Dismiss Petition for Lack of Exhaustion (Doc. 8) is **GRANTED**; Petitioner's Motion for Evidentiary Hearing (Doc. 11) is **DENIED**; and Petitioner's Petition for Writ of Habeas Corpus (Doc. 2) is **DISMISSED WITHOUT PREJUDICE**.

▪ **SO ORDERED**, this 26th day of August, 2010.

/s/ W. Louis Sands
THE HONORABLE W. LOUIS SANDS,
UNITED STATES DISTRICT COURT