

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
AT COVINGTON**

CIVIL ACTION NO. 10-44-DLB

BOBBY DAVID BROCKMAN

PETITIONER

vs.

MEMORANDUM ORDER

STEVE HANEY, Warden, Northpoint Training Center

RESPONDENT

* * * * *

This matter is before the Court on the Report and Recommendation (Doc. #5) of the United States Magistrate Judge wherein she recommends that Petitioner Bobby David Brockman's Petition for Writ of Habeas Corpus (Doc. #1) pursuant to 28 U.S.C. § 2254 be denied as time-barred. Brockman timely filed objections to the Report and Recommendation. (Doc. #6). Respondent having filed no response to the objections, and the time for submitting a response having long expired, the Report and Recommendation and Petitioner's objections are ripe for review.

Although Brockman's handwritten objections are lengthy, he raises only one objection to the Magistrate Judge's recommendation. Brockman argues that the Magistrate Judge's Report and Recommendation should be disregarded because he did not consent to a Magistrate Judge "exercising jurisdiction" over this matter. "Petitioner objects to the jurisdiction of the Magistrate Judge, her disposition as well as to the Report and Recommendation as returned unsolicited or consented to in compliance with 28 U.S.C. § 636(c)(1) because the Magistrate Judge is not acting upon the consent of this party." (Doc.

#6 at 2). This objection is without merit.

Pursuant to local practice, upon the filing of Brockman's Petition for Writ of Habeas Corpus, this matter was automatically referred to United States Magistrate Judge Candace J. Smith for initial consideration and preparation of a Report and Recommendation. See General Order 10-14 ("All . . . petitions for writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed with the Court . . . shall be divided equally by a blind rotating draw and referred among full-time United States Magistrate Judges . . ."). This referral was made pursuant to 28 U.S.C. § 636(b), and did not require the consent of either party. 28 U.S.C. § 636(b)(1)(B) ("[A] judge may . . . designate a magistrate judge to . . . submit to a judge of the court proposed finding of fact and recommendations for the disposition, by a judge of the court . . . of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement."); see *Miller v. U.S. Dep't of Justice*, 905 F.2d 1538 (6th Cir. 1990) ("28 U.S.C. § 636(b)(1)(B) clearly authorized the referral of [plaintiffs'] prison conditions suit to the magistrate for a report and recommendation without the plaintiffs' consent.").

The fact that Brockman did not consent to a Magistrate Judge exercising jurisdiction over his case under 28 U.S.C. § 636(c) means only that the Magistrate Judge lacks the authority to enter final judgment. See 28 U.S.C. § 636(c) ("Upon the consent of the parties, a full-time United States magistrate judge . . . may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case . . ."). However, Magistrate Judge Smith has not entered any final judgment in this case, and Brockman's lack of consent has no bearing on the Court's authority to refer his petition to a Magistrate Judge for screening and preparation of a Report and Recommendation. Consequently,

Brockman's objection to the Report and Recommendation is **overruled**.

In addition, the Court's independent review of the record leads it to conclude that the Magistrate Judge Smith correctly recommended that Brockman's habeas corpus petition be denied as time-barred.

Accordingly, **IT IS ORDERED** as follows:

1. Petitioner's Objections to Magistrate Judge's Findings and Recommendations (Doc. #6) are hereby **OVERRULED**;
2. The Magistrate Judge's Report and Recommendation (Doc. #5) is hereby **ADOPTED** as the findings of fact and conclusions of law of the Court;
3. The Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. #1) is hereby **DENIED**;
4. This matter is hereby **DISMISSED** and **STRICKEN** from the active docket of the Court; and
5. For the reasons set forth in the Magistrate Judge's Report and Recommendation, the Court determines there would be no arguable merit to an appeal in this matter and, therefore, no certificate of appealability shall issue.

This 2nd day of September, 2010.



Signed By:

David L. Bunning

DB

United States District Judge