

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at FRANKFORT

BENNIE L. GAMBLE, JR.,)	
)	
Petitioner,)	Civil Action No.
)	5:14-CV-437-JMH-EBA
v.)	
)	
DON BOTTOM, Warden,)	MEMORANDUM OPINION & ORDER
)	
Respondent.)	

** ** ** ** **

This matter is before the Court on the Report and Recommendation of Magistrate Judge Edward B. Atkins [DE 3]. Said action was referred to the magistrate for initial consideration of the pro se petition of Bennie L. Gamble, Jr., for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 [DE 1] and the preparation of a Report and Recommendation pursuant to 28 U.S.C. § 636(b). No objections to the Report and Recommendation have been filed within the fourteen day period provided for in 28 U.S.C. § 636(b)(1), and this matter is now ripe for consideration.

Generally, "a judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations made by the magistrate judge." 28 U.S.C. § 636. However, when the petitioner fails to file any objections to the Report and Recommendation, as in the case *sub judice*, "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard." *Thomas v.*

Arn, 474 U.S. 140, 150 (1985). Further, the Court concludes that the recommended disposition is well supported by the law cited by the magistrate judge and based upon the contents of the Petition. Consequently and in the absence of any objections from Petitioner Gamble, this Court adopts the well-articulated and detailed reasoning set forth in the Report and Recommendation as its own.

In his Report and Recommendation, the Magistrate Judge recommends that the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be denied without prejudice as Petitioner has failed to "state the facts supporting each ground" for relief claimed, even though he has been provided an opportunity to file a supplemental pleading detailing the facts supporting each ground raised in his § 2254 petition. The Magistrate Judge also noted that proper venue for this action lies in the Western District of Kentucky per LR 3.2(b) ("A . . . state habeas corpus petition shall be assigned to the jury division that includes the court . . . in which the challenged judgment, conviction or order was rendered.") and LR 3.1(b)(4) (assigning McCracken County, the county in which Petitioner was convicted, to the Paducah division of the Western District of Kentucky) and that the Court could, "[f]or the convenience of the parties and witnesses, in the interests of justice," transfer the action to the Western District of Kentucky pursuant to 28 U.S.C. § 1404(a). In this instance, the Court sees no reason to transfer the action. Neither convenience nor the

interest of justice will be served by transferring this action.¹

Finally, the Court agrees with the Magistrate Judge's assessment concerning the denial of a certificate of appealability. Reasonable jurists would not debate the denial of Petitioner's § 2254 petition or conclude that the issues presented are adequate to deserve encouragement to proceed further. See *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). A certificate of appealability is denied.

Accordingly, **IT IS ORDERED:**

(1) that the Magistrate Judge's Order [DE 3] is **ACCEPTED** and **ADOPTED** as the Court's decision;

(2) that the petition of Bennie L. Gamble for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 [DE 1] is **DENIED WITHOUT PREJUDICE**; and

(3) that no certificate of appealability shall issue.

This is the 23rd day of January, 2015.



Signed By:

Joseph M. Hood *JMH*

Senior U.S. District Judge

¹ Further, the Court agrees with the Magistrate Judge that Gamble's decision to file his petition in this district was not a good faith error as he has at least three previous cases transferred from this district to the Western District. See Case Nos. 5:13-cv-270-KKC; 7:12-cv-76-ART; 7:11-cv-145-GFVT.