

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
LONDON

BECKHAM B. BARNES,

Plaintiff,

V.

CLARK TAYLOR, WARDEN,

Defendant.

Civil No. 09-299-GFVT

ORDER

*** ***)

This matter is before the Court pending review of the Report and Recommendation of United States Magistrate Judge Candace J. Smith, filed on March 12, 2014. [R. 116.] The Report and Recommendation addresses the posture of the Petitioner’s Motion for Stay and Abeyance While Pursuing State Court Review. [R. 110.] In November, 2013, Barnes filed both an Amended Petition [R. 111] which included new claims based on new evidence, and also a motion seeking to stay this matter [R. 110] while exhausting his new claim in state court as required by 28 U.S.C. § 2254(b)(1). Respondent does not oppose Barnes’ Motion for Stay and Abeyance, and agrees that the Court should stay Barnes’ claims while he pursues exhaustion in state court. [R. 114 at 5.]

The Report and Recommendation recognizes that the Supreme Court has found that a stay and abeyance is appropriate in certain circumstances to allow a petitioner to exhaust his claims in state court when good cause exists for the petitioner’s prior failure to exhaust such claims. [R. 116 at 2 (citing *Rhines v. Weber*, 544 U.S. 269, 277-79 (2005).] The Report further advises that Barnes has asserted good cause for not previously exhausting these claims, and that,

given the new evidence which was not previously disclosed to Barnes, his new claims are not plainly meritless. [R. 116 at 2-3.] The Report therefore recommends that this matter be administratively closed while Barnes returns to state court to exhaust his new claims.

The Report also indicates that the parties have waived the fourteen (14)-day period for filing Objections to the Report and Recommendation. [R. 116 at 3.] Generally, this Court must make a *de novo* determination of those portions of a recommended disposition to which objections are made. 28 U.S.C. § 636(b)(1)(c). When no objections are made, however, this Court is not required to “review . . . a magistrate’s factual or legal conclusions, under a *de novo* or any other standard” *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Parties who fail to object to a Magistrate’s report and recommendation are also barred from appealing a district court’s order adopting that report and recommendation. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Nevertheless, this Court has examined the record, and it agrees with the Magistrate Judge’s Recommended Disposition.

Accordingly, and the Court being sufficiently advised, it is hereby **ORDERED** as follows:

1. The Magistrate Judge’s Recommended Disposition [**R. 116**] is **ADOPTED** as and for the Opinion of the Court;
2. The Clerk of the Court is **DIRECTED** to **close this case for administrative and statistical purposes only**. Nothing in this order or in the related docket entry shall be considered a dismissal of this matter; and
3. Upon receipt of a motion to reopen this case, the Court will, by separate order, instruct the Clerk to reopen this case for administrative purposes.

This 13th day of March, 2014.



Signed By:

Gregory F. Van Tatenhove 

United States District Judge