UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

DAVID MIXON PETITIONER

V. CIVIL ACTION NO. 3:17-CV-61-DPJ-MTP

SUPERINTENDENT JACQUELINE BANKS RESPONDENT

ORDER

Petitioner David Mixon filed this habeas action claiming the Mississippi Parole Board unjustly denied his parole on account of his race. Respondent Superintendent Jacqueline Banks construed the petition as asserting due-process and equal-protection claims and sought dismissal of both. In a well-reasoned and thorough Report and Recommendation, United States Magistrate Judge Michael T. Parker held that the due-process claim should be dismissed and the equal-protection claim should go forward, for the time being. R&R [9].

First, Judge Parker reasoned that because Mixon has no protected liberty interest in parole, his due-process claim should be dismissed. *Id.* at 4. The undersigned agrees. Second, Judge Parker found that Mixon had stated a plausible equal-protection claim. *Id.* at 5 (noting that at this stage of the case, the Court must take Petitioner's allegations as true). After considering Respondent's argument in favor of dismissal for failure to exhaust, Judge Parker concluded that due to the absence of copies of Petitioner's state-court pleadings, he could not determine whether the relief sought was properly presented to the state courts. *Id.* at 8. So, Judge Parker recommended denying the motion to dismiss the equal-protection claim without prejudice to Respondent's right to raise the issue after filing a full and complete record from all proceedings in the state courts. *Id.* at 9.

In her Partial Objection, Respondent again urged dismissal and separately filed additional documents that she contends represent the entire state-court record. Obj. [10] at 2; *see also* State Court Rec. [11]. Nevertheless, the undersigned finds that the judicious approach is to adopt Judge Parker's Report and Recommendation in its entirety and permit Respondent to present these arguments and records to Judge Parker for full consideration. *See* R&R [9] at 9 (directing Respondent to file an answer and "a complete record" and noting that she could raise her exhaustion argument "in her answer or by subsequent motion").

IT IS, THEREFORE, ORDERED that the Report and Recommendation [9] of United States Magistrate Judge Parker be, and the same is hereby, adopted as the finding of this Court. Respondent' Motion to Dismiss [7] is granted in part and denied in part.

SO ORDERED AND ADJUDGED this the 19th day of October, 2017.

s/ *Daniel P. Jordan III*
UNITED STATES DISTRICT JUDGE