

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

RODOLFO McCANDLESS  
FALCON, IV

PETITIONER

V.

CIVIL ACTION NO. 3:21-CV-376-KHJ-FKB

COMMISSIONER BURL CAIN

RESPONDENT

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge F. Keith Ball. [16]. That Report recommends that the Court deny Respondent Commissioner Burl Cain's Motion to Dismiss [12] as moot. Written objections to the Report were due by May 9, 2022. The Report notified the parties that failure to file written objections to the findings and recommendations by that date would bar further appeal in accordance with 28 U.S.C. § 636.

When no party has objected to a magistrate judge's report and recommendation, the Court need not review it de novo. 28 U.S.C. § 636(b)(1). In such cases, the Court can apply the clearly erroneous, abuse of discretion, and contrary to law standards of review. *See United States v. Brigham*, 569 F.3d 220, 228 (5th Cir. 2009) (citation omitted).

Petitioner Rodolfo McCandless Falcon, IV filed for habeas relief pursuant to 28 U.S.C. § 2254. *See* Petition for Writ of Habeas Corpus [1]. Respondent Cain moved to dismiss the petition because it contained both exhausted and unexhausted claims. Respondent's Mot. to Dismiss [12] at 2. In response, Falcon asked the Court

to hold the petition in abeyance while he awaited a ruling by the Supreme Court of Mississippi on his state motion for post-conviction relief. Resp. [14]. Cain later filed a Supplement to the Motion to Dismiss [15], informing the Court that both of Falcon's claims were now exhausted, and thus the Motion to Dismiss [12] was moot. [15] at 2–3.

Based on this, the Magistrate Judge recommended that the Court deny the Motion to Dismiss [12] as moot. [16] at 1. The Magistrate Judge further recommended that if the Report and Recommendation is adopted, Cain be given 30 days from entry of this Order to file an answer or other responsive pleading to the petition. *Id.* Falcon did not object to the Recommendation, and his time to do so has passed. The Court finds the Report and Recommendation is not clearly erroneous or contrary to law. The Court adopts the Report and Recommendation as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Report and Recommendation [16] of United States Magistrate Judge F. Keith Ball, entered in this cause should be, and the same is, adopted as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that Respondent's Motion to Dismiss [12] be denied as moot. Cain has 30 days from today to file an answer or other responsive pleading to the petition.

SO ORDERED AND ADJUDGED this the 10th day of May, 2022.

*s/ Kristi H. Johnson*  
UNITED STATES DISTRICT JUDGE