

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

WALLACE LEWIS,	)	
	)	CASE NO. 4:21-cv-412
Petitioner,	)	
	)	
v.	)	JUDGE BRIDGET MEEHAN BRENNAN
	)	
LaSHANN EPPINGER, Warden,	)	<b><u>MEMORANDUM OPINION</u></b>
	)	<b><u>AND ORDER</u></b>
Respondent.	)	

Before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge Jennifer Dowdell Armstrong, recommending that the Court dismiss this action without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b) and that this action be stricken from the Court’s active docket. (Doc. No. 9-1.)

For the reasons stated herein, the Court accepts the recommendation that this action be dismissed without prejudice. Accordingly, Petitioner Lewis’s petition is denied, and this action is dismissed without prejudice. The Court does not accept the recommendation that this action be stricken from the Court’s active docket.

**I. Background**

On February 22, 2021, Petitioner Wallace Lewis filed his petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. No. 1).<sup>1</sup> On June 28, 2021, Respondent filed a return of writ. (Doc. No. 5.) On July 16, 2021, Petitioner sought leave for an extension of time to file a traverse. (Doc. No. 6.) The Court granted this motion and ordered that the deadline to file a traverse be extended to September 28, 2021. (Doc. No. 7.) Petitioner did not file a traverse by this date.

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<sup>1</sup> For ease and consistency, record citations are to the electronically stamped CM/ECF document number and PageID# rather than any internal pagination.

On September 2, 2022, this case was referred to Judge Armstrong. (September 2, 2022 Order.) Notice of this referral was sent to Petitioner. This notice was marked “return to sender” on September 19, 2022. (Doc. No. 8.) Petitioner was “located using the Ohio Department of Rehabilitation and Corrections Inmate Search and this notice was re-mailed to the correct address.” (*Id.*)

On October 20, 2023, Judge Armstrong issued an order that advised Petitioner that he had not filed a traverse and provided a final deadline of November 17, 2023 to do so, or the Court would proceed to consider the writ. (October 20, 2023 Order.) This order further advised Petitioner of his obligation to “keep the court apprised of his current address” and notified Petitioner that “failure to do so may result in dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).” (*Id.*) Petitioner did not file a traverse by November 17, 2023, nor did he update his address.

On November 30, 2023, Judge Armstrong issued a R&R recommending that the petition be “(1) dismissed without prejudice due to his failure to prosecute and to comply with the Court’s Order dated October 20, 2023; and (2) this action be stricken from the Court’s active docket.” (Doc. No. 9-1 at 1023-24.) A corrected version of the R&R was mailed to Petitioner on December 1, 2023.

## **II. Law and Analysis**

Under the relevant statute:

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.


28 U.S.C. § 636(b)(1)(C) (flush language).

The corrected R&R was sent to Petitioner on December 1, 2023. No objection to the R&R has been filed, and the deadline has since passed. The failure to timely file written objections to a report and recommendation of a magistrate judge constitutes a waiver of *de novo* review by the district court. *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 728 F.2d 813 (6th Cir. 1984), *aff'd*, 474 U.S. 140 (1985). The failure to file written objections also results in a waiver of the right to appeal. *Thomas*, 728 F.2d at 815.

The Court has reviewed the R&R and ACCEPTS the recommendation that this case be dismissed without prejudice for failure to prosecute pursuant to Rule 41(b). Accordingly, the petition is DENIED and DISMISSED.

**IT IS SO ORDERED.**

**Date:** February 5, 2024

  
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BRIDGET MEEHAN BRENNAN  
UNITED STATES DISTRICT JUDGE