

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROBERT CUNNINGHAM, : Case No. 1:14-cv-377
: :
Petitioner, : Judge Timothy S. Black
: Magistrate Judge Stephanie K. Bowman
vs. : :
: :
HAMILTON COUNTY SHERIFF, : :
: :
Respondent. : :

**DECISION AND ENTRY ADOPTING THE REPORT AND
RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE
(Doc. 9)**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on August 28, 2014, submitted a Report and Recommendations. (Doc. 9). No objections were filed.¹

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does

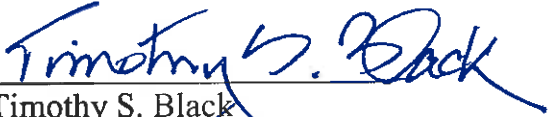
¹ The Court notes that although proper notice was served upon Petitioner, the copy of the Report and Recommendation which the Clerk mailed to Petitioner was returned to the Court due to Plaintiff's failure to apprise the Court of his change of address. (Doc. 10). By failing to keep the Court apprised of his current address, Petitioner demonstrates a lack of prosecution of his action. *See, e.g., Theede v. United States Dep't of Labor*, 172 F.3d 1262, 1265 (10th Cir. 1999) (failure to object to a Magistrate Judge's Report and Recommendation, due to delay resulting from party's failure to bring to the court's attention a change in address, constitutes failure to object in a timely manner). Because the Recommendation was mailed to the last known address, it was properly served, and the party waived his right to appellate review. *See also Barber v. Runyon*, No. 93-6318, 1994 U.S. App. LEXIS 9709, at *1 (6th Cir. May 2, 1994).

determine that such Report and Recommendations should be and is hereby adopted in its entirety. Accordingly:

1. The Report and Recommendations (Doc. 9) is **ADOPTED**;
2. Petitioner's petition for a writ of habeas corpus (Doc. 1) is **DISMISSED** without prejudice to refile after Petitioner has exhausted all available state court remedies, which includes a direct appeal from his August 8, 2014 convictions and sentences in Hamilton County Court of Common Pleas Case Nos. B138003-A and B1404316-A;
3. Petitioner's motions to amend (Docs. 2, 8) are **DENIED** as **MOOT**;
4. A certificate of appealability under 28 U.S.C. § 2253 is **DENIED**; and
5. An application to proceed on appeal *in forma pauperis* under 28 U.S.C. Section 1915(a)(3) is **DENIED**.

IT IS SO ORDERED.

Date: 9/16/14


Timothy S. Black
United States District Judge