

**FILED**

SEP 10 2013

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY     Teb     DEPUTY

KYLE THOMAS, )  
                  ) Petitioner, )  
                  ) )  
vs.              ) )  
                  ) )  
TRACY McCOLLUM, Warden, )  
                  ) )  
                  ) Respondent. )

No. CIV-13-622-W

**ORDER**

On August 16, 2013, United States Magistrate Judge Suzanne Mitchell issued a Report and Recommendation in this matter and recommended that the Petition for Writ of Habeas Corpus ("Petition") filed by petitioner Kyle Thomas pursuant to title 28, section 2241 of the United States Code be dismissed. The parties were advised of their right to object to the Report and Recommendation, but no objections have been filed within the allotted time.

Upon review of the record, the Court concurs with Magistrate Judge Mitchell's suggested disposition of this matter, the Motion to Dismiss Writ of Habeas Corpus [Doc. 12] filed by respondent Tracy McCollum, Warden, and Thomas' request to dismiss this matter. See Doc. 15.

Accordingly, the Court


- (1) ADOPTS the Report and Recommendation [Doc. 16] filed on August 16, 2013;
- (2) because Thomas has failed to fully exhaust his state judicial remedy, see 57 O.S. § 564.1, and because he has the absolute right, as he has so requested, to dismiss the instant Petition without prejudice because McCollum has neither answered nor moved

for summary judgment, e.g., Rule 41(a)(1), F.R.Civ.P., GRANTS Thomas' request for dismissal, see Doc. 15;

(3) deems MOOT McCollum's Motion to Dismiss Writ of Habeas Corpus [Doc. 12] filed on July 31, 2013; and

(4) DISMISSES this matter without prejudice.

ENTERED this 10<sup>th</sup> day of September, 2013.

  
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LEE R. WEST  
UNITED STATES DISTRICT JUDGE