

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOSE ROSA,)
Petitioner,) Civil Action No. 3: 17-cv-0010
v.) United States District Judge
WARDEN, MOSHANNON VALLEY) Kim R. Gibson
CORRECTION INSTITUTION,)
Respondent.

MEMORANDUM ORDER

Pending before the Court is the Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 filed by Petitioner, Jose Rosa. (ECF No. 2). The matter was referred to United States Magistrate Judge Cynthia Reed Eddy for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules of Magistrate Judges.

The magistrate judge filed a Report and Recommendation (ECF No. 16) on June 27, 2017, recommending that the Petition for Writ of Habeas Corpus be dismissed without prejudice as Petitioner has failed to exhaust the administrative remedies available to him. Petitioner was served with the Report and Recommendation at his listed address and was advised that he had until July 17, 2017, to file written objections to the Report and Recommendation. To date, no objections have been filed nor has Petitioner sought an extension of time in which file objections.

After *de novo* review of the petition and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 31st day of July, 2017:

IT IS ORDERED that the instant petition for writ of habeas corpus is **DISMISSED** for failure to exhaust administrative remedies.

IT IS FURTHER ORDERED that the Report and Recommendation filed June 27, 2017, (ECF No. 16) is **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that, pursuant to Federal Rule of Appellate Procedure 4(a)(1)(B), Petitioner has sixty (60) days after judgment is entered to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure. Federal prisoner appeals from the denial of a Section 2241 habeas proceeding are not governed by the certificate of appealability requirement. *See United States v. Cepero*, 224 F.3d 256, 264-65 (3d Cir. 2000) (en banc), abrogated on other grounds by *Gonzalez v. Thaler*, 132 S.Ct. 641 (2012). Therefore, Petitioner need not apply for one with this Court or with the Court of Appeals for the Third Circuit before filing an appeal from the denial of his habeas petition.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.



Kim R. Gibson
United States District Judge

cc: **JOSE ROSA, 91067-054**
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