

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Wesley Blakeney,)	C/A No. 5:14-cv-3153 DCN
)	
Petitioner,)	
)	
vs.)	<u>ORDER</u>
)	
Federal Bureau of Prisons,)	
)	
Defendant.)	

The above referenced case is before this court upon the magistrate judge's recommendation that the court recharacterize this § 2241 petition as a § 2255 motion, and that the motion be filed in petitioner's criminal case, *United States v. Blakeley*, C/R No. 4:09-cr-229 RBH-6 (D.S.C.) for all further proceedings. It was further recommended that the district court direct the Clerk of Court to open a § 2255 action and to lose this § 2241 action.

This court is charged with conducting a de novo review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. Thomas v Arn, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).¹ **Petitioner timely filed his reply, stating his agreement**

¹In Wright v. Collins, 766 F.2d 841 (4th Cir. 1985), the court held "that a pro se litigant must receive fair notification of the consequences of failure to object to a magistrate judge's report before such a procedural default will result in waiver of the right to appeal. The notice

with the Report and Recommendation on August 25, 2014.

A de novo review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's Report and Recommendation is **AFFIRMED**, and the Clerk of Court is directed to re-file petitioner's §2241 petition as a § 2255 motion in petitioner's criminal case, *United States v. Blakeeny*, C/R No. 4:09-cr-229-RBH-6 (D.S.C.) for all further proceedings.

IT IS FURTHER ORDERED that the Clerk of Court open a new § 2255 action.

IT IS FURTHER ORDERED that the instant case is **DISMISSED**.

AND IT IS SO ORDERED.



David C. Norton
United States District Judge

August 25, 2014
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure

must be 'sufficiently understandable to one in appellant's circumstances fairly to appraise him of what is required.'" Id. at 846. Plaintiff was advised in a clear manner that his objections had to be filed within ten (10) days, and he received notice of the consequences at the appellate level of his failure to object to the magistrate judge's report.