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IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA BECKLEY DIVISION

MICHAEL MAURICE WILSON,

Petitioner,

CIVIL ACTION NO. 5:15-cv-14525

WARDEN COAKLEY,

v.

Respondent.

MEMORANDUM OPINION AND ORDER

On October 30, 2015, the Petitioner filed his Application to Proceed in Forma Pauperis (Document 1) and his Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person

in State or Federal Custody (Document 2).

By *Standing Order* (Document 3) entered on October 30, 2015, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. Subsequently, by *Order* (Document 4) entered on January 6, 2016, the case was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission of proposed findings of fact and recommendation for disposition.

On January 10, 2017, Magistrate Judge Aboulhosn submitted a *Proposed Findings and Recommendation* (Document 11) wherein it is recommended that this Court construe the Petitioner's *Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in State or Federal Custody* (Document 2) as a Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255, and transfer it to the United States District Court for the Eastern District of Virginia.

Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by

January 27, 2017, and none were filed by either party. On January 20, 2017, the Petitioner filed a

letter-form response (Document 13) indicating his agreement with the Magistrate Judge's

recommendation.

The Court is not required to review, under a de novo or any other standard, the factual or legal

conclusions of the magistrate judge as to those portions of the findings or recommendation to which

no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file timely

objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's

Order. 28 U.S.C. § 636(b)(1); see also Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989);

United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation

of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS**

that the Petitioner's Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in

State or Federal Custody (Document 2) be CONSTRUED as a Motion to Vacate, Set Aside or

Correct Sentence under 28 U.S.C. § 2255, and be TRANSFERRED to the United States District

Court for the Eastern District of Virginia.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge

Aboulhosn, counsel of record, and any unrepresented party.

ENTER:

January 30, 2017

RENE C BERGER

UNITED STATES DISTRICT JUDGE

SOUTHERN DISTRICT OF WEST VIRGINIA

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