

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG**

EUNICE HUSBAND,

Petitioner,

v.

**CIVIL ACTION NO. 1:12-cv-96
CRIMINAL ACTION NO. 1:08-cr-16
(Judge Bailey)**

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Local Rule, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Seibert filed his R&R on August 1, 2012 [Crim. Doc. 152; Civ. Doc. 11]. In that filing, the magistrate judge recommended that this Court deny the petitioner's Motion to Vacate under 28 U.S.C. § 2255 [Crim. Doc. 142; Civ. Doc. 1] as untimely.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, 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). In addition, failure to file timely objections constitutes a waiver of *de novo*

review and the right to appeal this Court's Order. 28 U.S.C. 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R&R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). The docket sheet reflects that service was accepted on August 6, 2012 [Crim. Doc. 153; Civ. Doc. 12]. To date, no objections have been filed.

This Court acknowledges the petitioner's additional filings, the Motion to Acknowledge and Consider and Order Respondent to Cause a Copy of Motion for Relief Under Section 2255 to be Served Upon Petitioner [Crim. Doc. 154; Civ. Doc. 13] and the Request for Government's Response Brief to Petitioner's 28 U.S.C. § 2255 Motion [Crim. Doc. 157; Civ. Doc. 14]. These filings request the Government's response to the petitioner's Section 2255 Motion; however, the Government's response, which addresses the merits of the petitioner's § 2255 petition, is of no consequence to this case. Further, neither of the petitioner's filings, filed after receipt of and noting the R&R, addresses the timeliness issue that is discussed in the R&R. The petitioner was clearly aware of the need to file any objections and the consequences of failing to do so. As such, this Court will review the R&R for clear error.

Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's R&R [**Crim. Doc. 152; Civ. Doc. 11**] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the petitioner's Motion to Vacate under 28 U.S.C. § 2255 [**Crim. Doc. 142; Civ. Doc. 1**] is **DENIED** and **DISMISSED WITH PREJUDICE**. Further, the Motion to

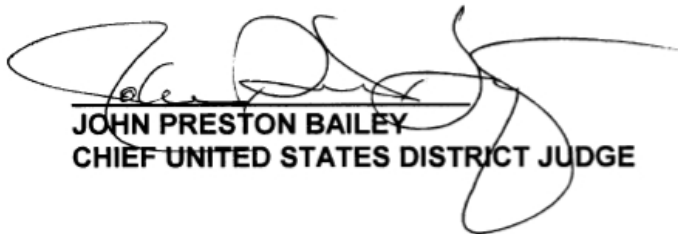
Acknowledge and Consider and Order Respondent to Cause a Copy of Motion for Relief Under Section 2255 to be Served Upon Petitioner [**Crim. Doc. 154; Civ. Doc. 13**] is hereby **DENIED AS MOOT**. Therefore, this case is hereby **ORDERED STRICKEN** from the active docket of this Court. The Clerk is directed to enter a judgment in favor of the respondent.

As a final matter, upon an independent review of the record, this Court hereby **DENIES** the petitioner a certificate of appealability, finding that he had failed to make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel or record and to mail a copy to the pro se petitioner.

DATED: July 9, 2013



JOHN PRESTON BAILEY
CHIEF UNITED STATES DISTRICT JUDGE