

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

HAROLD VIA,

Petitioner,

v.

Civil Action No. 2:10cv101

TAMARA S. LYN, Acting Warden,

Respondent.

ORDER

On January 24, 2011, Magistrate Judge John S. Kaull filed his Report and Recommendation (R&R) (Doc. 34), wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within fourteen (14) days after being served with a copy of the R&R. No objections to the Magistrate Judge's R&R have been filed. Accordingly, this Court will proceed with consideration of the R&R, reviewing for clear error.¹

Upon examination of the report from the Magistrate Judge, it appears to this Court that the issues raised by the Petitioner's Application for Habeas Corpus, filed pursuant to 28 U.S.C. § 2241, were thoroughly considered by Magistrate Judge Kaull in his R&R. Moreover, this Court, upon a review for clear error, is of the opinion that the R&R accurately reflects the law applicable to this case. Therefore, it is

ORDERED that Magistrate Judge Kaull's R&R (Doc. 34) be, and the same hereby is, **ADOPTED**. Accordingly, it is

¹The failure of a party to object to a Report and Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See **Wells v. Shriners Hospital**, 109 F.3d 198, 199-200 (4th Cir. 1997); **Thomas v. Arn**, 474 U.S. 140, 148-153 (1985).

ORDERED that the respondent's Motion to Dismiss, or in the Alternative, for Summary Judgment (Doc. 21) shall be, and the same hereby is, **GRANTED IN PART** and **DENIED IN PART**, consistent to the R&R. It is further

ORDERED that the petitioner's motion for injunctive relief (Doc. 2) shall be, and the same hereby is, **DENIED**. It is further

ORDERED that the petitioner's Application for Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Doc. 1) shall be, and the same hereby is, **DENIED** and **DISMISSED WITH PREJUDICE**. It is further


ORDERED that the Clerk shall enter judgment for the respondent. It is further

ORDERED that the above-styled action shall be **STRICKEN** from the docket of this Court. It is further

ORDERED that, if a party should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of Court is directed to transmit a copy of this Order to all parties appearing herein.

DATED: February 15, 2011.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE