

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

ROBERT SHROUT,

Petitioner,

v.

**CIVIL ACTION NO. 2:13-CV-22
(BAILEY)**

EVELYN SEIFERT, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull [Doc. 21]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R&R on November 18, 2013, wherein he recommends this Court deny the Respondent's Motion to Dismiss [Doc. 15], and that the Respondent be ordered to answer the merits of the petition.

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 Kaul'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). No objections have been filed. Accordingly, this Court will review the R&R for clear error.

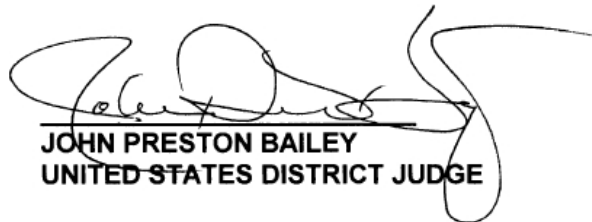
Upon careful review of the above, it is the opinion of this Court that the **Report and Recommendation [Doc. 21]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court **ORDERS** that the Respondent's Motion to Dismiss **[Doc. 15]** be **DENIED**. Further, this Court hereby **ORDERS** that the Respondent answer the merits of the petition within **twenty-eight (28) days** from the entry of this Order.

As a final matter, the petitioner's renewed request for counsel **[Doc. 24]** is **DENIED WITHOUT PREJUDICE** for the same reasons set out in Magistrate Judge Kaul's Order dated November 25, 2013 [Doc. 23].

It is so **ORDERED**.

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

DATED: December 12, 2013.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE