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

NEIL GIFFORD LONG.

Plaintiff,

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CIVIL ACTION NO. 2:14-CV-10 (BAILEY)

DR. DIIONISIO ENRIQUE POLICARPIO, MD, RALPH E. PRICE, HSA MEDICAL ADMINISTRATOR, PATRICK MIRANDY, Warden of St. Mary's Correctional Center, JIM RUBENSTEIN, Commissioner of WV Division of Corrections,

Defendants.

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. 17]. 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 December 10, 2014, wherein he recommends this Court dismiss the plaintiff's § 1983 claims against defendants Mirandy and Rubenstein and allow the claims against defendants Policarpio and Price proceed.

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 Kaull'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 reflects that service was accepted on December 13, 2014 [Doc. 18]. 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. 17] 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 plaintiff's § 1983 claims [Doc. 1] against defendants Mirandy and

Rubenstein be **DENIED** and **DISMISSED WITH PREJUDICE** and the plaintiff's claims

against defendants Dr. Policarpio and Ralph Price shall PROCEED. This Court further

DIRECTS the United States Marshals Service to **SERVE** defendants Policarpio and Price

with a copy of the summons and Complaint.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record, the

United States Marshals Service, and to mail a copy to the *pro se* plaintiff.

DATED: January 5, 2015.

JOHN PRESTON BAILEY UNITED STATES DISTRICT JUDGE