

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

ROBERT KENNETH BRINSON,

Petitioner,

v.

**CIVIL ACTION NO. 2:15-CV-62
(BAILEY)**

TERRY O'BRIEN,

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 Michael John Aloï [Doc. 29]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Aloï for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Aloï filed his R&R on January 26, 2017, wherein he recommends this Court grant the petitioner's § 2241 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 Aloi'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 by the petitioner on January 30, 2017 [Doc. 10]. The petitioner timely filed his Objections on February 13, 2017 [Doc. 31].¹ This Court notes that the R&R is favorable to the petitioner. The respondent has failed to file any objections. 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. 29]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. The Respondent's Motion to Dismiss or for Summary Judgment **[Doc. 14]** is **DENIED**. Accordingly, this Court **GRANTS** the petitioner's Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 **[Doc. 1]**. Accordingly, for the reasons thoroughly set out in the R&R, this Court hereby directs the BOP to recalculate the petitioner's sentence to award him credit for the time spent in State custody after September 23, 1993 against the 87-month sentence imposed by the District of South Carolina **and** the 240-month sentence imposed by the Western District of North Carolina. This Court further **DIRECTS** the Clerk to enter judgment in favor of the petitioner and to **STRIKE** this case from the active docket of this Court.

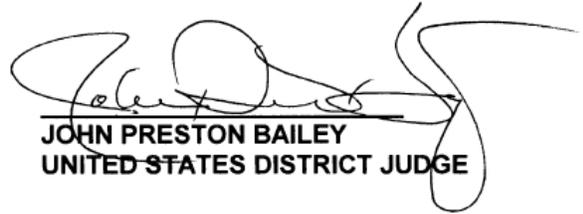
It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to the BOP and any counsel

¹ This Court notes the petitioner's filing does not actually seek any relief or make any specific objections. Rather, petitioner requests clarification of portions of the R&R. As the petitioner has received the requested relief, this Court finds it unnecessary to attempt to further interpret the R&R or simplify the reasoning contained therein.

of record and to mail a copy to the *pro se* petitioner.

DATED: February 21, 2017.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE