

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

JESSE MOATS,

Petitioner,

v.

**CIVIL ACTION NO.: 3:16-CV-150
(GROH)**

MARVIN C. PLUMLEY,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation (“R&R”) of United States Magistrate Judge Robert W. Trumble. Pursuant to this Court’s Local Rules, this action was referred to Magistrate Judge Trumble for submission of an R&R. Magistrate Judge Trumble issued his R&R [ECF No. 17] on March 17, 2017. In the R&R, he recommends that the Petitioner’s 28 U.S.C. § 2254 petition [ECF No. 1] be dismissed without prejudice and the Petitioner’s Motion to Compel an Answer from the Respondent [ECF No. 12] be denied as moot. For the reasons set forth below, the court **ADOPTS** Magistrate Judge Trumble’s R&R, **DISMISSES** the Petitioner’s § 2254 Petition **WITHOUT PREJUDICE** and **DENIES AS MOOT** the Petitioner’s Motion to Compel an Answer.

Objections to Magistrate Judge Trumble’s R&R were due within fourteen days of the Petitioner being served with a copy of the same. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). Service was accepted at the Huttonsville Correctional Center in Huttonsville, West Virginia, on March 20, 2017. On March 27, 2017, the Petitioner timely

filed his objections to the R&R [ECF No. 19]. In these objections, he requests the Court set a hearing in this matter. Therefore, his objections were also filed as a *Pro Se* Motion for Hearing [ECF No. 20].

The Court is aware of the Petitioner's *pro se* status. *Pro se* pleadings are held to less stringent standards than those drafted by licensed attorneys. See Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978). Accordingly, the Court construes liberally the Petitioner's arguments in opposition to the R&R, but will not create objections where none exist.

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, objections to a magistrate judge's R&R must be specific. See Orpiano v. Johnson, 687 F.2d 44, 48 (4th Cir. 1982); see also Parker v. Comm'r of Soc. Sec., No. 4:11cv00030, 2012 WL 1356593, at *3 (W. D. Va. Apr. 19, 2012). General objections or mere reiterations of arguments already presented to the magistrate judge "have the same effect as a failure to object" and do not warrant *de novo* review. Parker, 2012 WL 1356593, at *3 (internal quotations and citation omitted); see also United States v. Midgette, 478 F.3d 616, 621-22 (4th Cir. 2007); Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003). Thus, the Court will review *de novo* only those portions of the R&R to which the Petitioner has made specific objections. The remainder of the R&R to which "general and conclusory" objections have been made will be reviewed for clear error. See McGhee v. Colvin, 6:14-cv-02644-JMC, 2015 WL 5707866, at *1 (Sept. 25, 2015) (internal quotations and citation omitted).

Here, the Petitioner makes just one specific objection to the R&R. He claims he

has filed direct appeals on his conviction, sentence, and Habeas proceedings, and has thus exhausted his available state remedies. Upon review, it appears as though the Petitioner did file appeals with the Supreme Court of Appeals of West Virginia. However, they were dismissed as premature because the underlying cases are still pending before the Circuit Court of Monongalia County, West Virginia. Accordingly, because the Petitioner still has potential remedies available in state court, the exhaustion requirement is not satisfied and the Petitioner's objection is **OVERRULED**.

The remainder of the Petitioner's arguments are, in some form, reiterations of claims or factual scenarios already presented. Consequently, in the absence of specific objections, this Court is not required to provide an explanation for adopting the remaining portions of the R&R. See McGhee, 2015 WL 5707866, at *2.

Therefore, upon careful review of the R&R, it is the opinion of this Court that Magistrate Judge Trumble's Report and Recommendation [ECF No. 17] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated therein. Accordingly, the Court **DISMISSES** the Petitioner's 28 U.S.C. § 2254 Petition [ECF No. 1] **WITHOUT PREJUDICE** and **DENIES AS MOOT** the Petitioner's Motion to Compel an Answer from the Respondent [ECF No. 12]. Further, the Court **DENIES AS MOOT** the Petitioner's *Pro Se* Motion for Hearing [ECF No. 20].

The Clerk is **DIRECTED** to strike this matter from the Court's active docket, enter a separate judgment in favor of the Respondent and transmit a copy of this Order to the *pro se* Petitioner by certified mail, return receipt requested, to his last known address as shown on the docket.

DATED: April 10, 2017


GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE