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

MARIO L. GORDON,

Petitioner,

v. **CIVIL ACTION NO.: 3:18-CV-91 (GROH)**

JENNIFER SAAD, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

Now before the Court is 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 a proposed R&R. Magistrate Judge Trumble issued his R&R [ECF No. 20] on December 20, 2019. Therein, Magistrate Judge Trumble recommends the Petitioner's § 2241 petition [ECF No. 10] be denied and dismissed with prejudice because the identical issue has already been decided in a prior § 2255 proceeding in the United States District Court for the Southern District of Illinois. Alternatively, Magistrate Judge Trumble recommends the Petitioner's § 2241 petition [ECF No. 10] be denied and dismissed without prejudice because the Petitioner fails to meet the test set forth in United States v. Wheeler, 886 F.3d 415 (4th Cir. 2018).

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a *de novo* review of the magistrate judge's findings where 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 to which no objection is made. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and of a petitioner's 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).

Objections to Magistrate Judge Trumble's R&R were due within fourteen plus three days of service. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The R&R was mailed to the Petitioner by certified mail on December 20, 2019. ECF No. 20. The Petitioner accepted service on December 24, 2019. ECF No. 22. To date, no objections have been filed. Accordingly, this Court will review the R&R for clear error.

Upon careful review of the R&R, it is the opinion of this Court that Magistrate Judge Trumble's Report and Recommendation [ECF No. 20] should be, and is hereby, **ORDERED ADOPTED** for the reasons more fully stated therein. Therefore, the Petitioner's § 2241 Petition [ECF No. 10] is **DENIED** and **DISMISSED WITH PREJUDICE** because the identical issue has already been decided in a prior § 2255 proceeding by the Southern District of Illinois.

This matter is **ORDERED STRICKEN** from the Court's active docket. The Clerk of Court is **DIRECTED** to mail a copy of this Order to the pro se Petitioner by certified mail, return receipt requested, at his last known address as reflected on the docket sheet.

DATED: January 21, 2020

GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE