

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

KIMBERLY TAYLOR,
Petitioner,

v.

Civil Action No. 1:11-0172

MYRON BATTIS, Warden,
Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the Court is Petitioner's Motion to Amend Under 28 U.S.C. § 2241. (Doc. No. 1). By Standing Order, this matter was referred to United States Magistrate Judge R. Clarke VanDervort for the submission of proposed findings of fact and a recommendation for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Judge VanDervort submitted to the court his Proposed Findings and Recommendation ("PF&R") on February 24, 2012, in which he recommended that the court DISMISS the Motion to Amend and REMOVE the matter from the court's docket. (Doc. No. 4).

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Findings and Recommendation. The failure of any party to file such objections within the time allotted constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir.

1989). Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985).

Neither party filed any objections to the Magistrate Judge's Findings and Recommendations within the required time period. Accordingly, the court **ADOPTS** the Findings and Recommendations of Magistrate Judge VanDervort and:

- 1) **DISMISSES** the Motion to Amend under 28 U.S.C. § 2241; and
- 2) **DIRECTS** the Clerk to move this matter from the court's active docket.

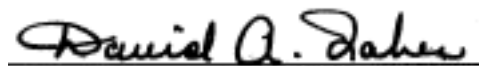
Additionally, the court has considered whether to grant a certificate of appealability in this case. See 28 U.S.C. § 2253(c). To grant a certificate of appealability, there must be a substantial showing of the denial of a constitutional right by demonstrating that the issues raised are debatable among jurists, that a court could resolve the issues differently, or that the questions deserve further proceedings. 28 U.S.C. § 2253(c); Slack v. McDaniel, 529 U.S. 473 (2000). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in

this instance. Accordingly, the court **DENIES** a certificate of appealability.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to Petitioner, pro se, and counsel of record.

IT IS SO ORDERED on this 28th day of March, 2012.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", written in black ink. The signature is positioned above a horizontal line.

David A. Faber

Senior United States District Judge