

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

BRIAN KEITH BUCKERY,
Petitioner,

v. CIVIL ACTION NO. 1:15-15736

B.J. JOHNSON, Warden,
Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the court is petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. ECF Nos. 1-3. By Standing Order, the matter was referred¹ to United States Magistrate Judge Omar J. Aboulhosn for submission of proposed findings and recommendations ("PF&R") for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). On September 29, 2017, the magistrate judge submitted his PF&R, in which he recommended that the district court deny petitioner's application to proceed without prepayment of fees and costs, dismiss this matter without prejudice, and remove the matter from the court's docket. ECF No. 8.

¹ This matter was originally referred to Magistrate Judge R. Clarke VanDevort, ECF No. 4, and then upon his retirement, the matter was referred to Magistrate Judge Aboulhosn. See ECF No. 5.

In accordance with the provisions of 28 U.S.C. § 636(b), petitioner was allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge Aboulhosn's Findings and Recommendation. The failure to file such objections constitutes a waiver of the right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

Petitioner failed to file any objections to the Magistrate Judge Aboulhosn's Findings and Recommendation within the seventeen-day period. Having reviewed the Findings and Recommendation, the court adopts the findings and recommendation contained therein.

The court hereby **ADOPTS** the factual and legal analysis contained within the PF&R, (ECF No. 8), **DENIES** petitioner's application to proceed without prepayment of fees and costs, (ECF No. 1), **DISMISSES** this matter, without prejudice, (ECF Nos. 2-3) and **DIRECTS** the Clerk to remove this case from the court's docket.

Additionally, the court has considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the

constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); 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 further directed to forward a copy of this Memorandum Opinion and Order to counsel of record and petitioner, pro se.

It is **SO ORDERED** this 5th day of December, 2017.

ENTER:



David A. Faber

Senior United States District Judge