

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

ASHLEY E. BROWNING,

Petitioner,

v.

CIVIL ACTION NO. 1:19-00660

M. E. REHERMAN,

Respondent.

**MEMORANDUM OPINION AND ORDER**

**I. Findings and Recommendation**

By Standing Order, this action was referred to United States Magistrate Judge Cheryl A. Eifert for submission of findings and recommendation regarding disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Judge Eifert submitted to the court her Findings and Recommendation on January 8, 2020, in which she recommended that the court grant petitioner's Motion to Respond and Dismiss, (ECF No. 10), dismiss without prejudice petitioner's Petition for a Writ of Habeas Corpus, (ECF No. 1), and remove this matter from the court's docket. (ECF No. 11.)

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days and three mailing days in which to file any objections to Magistrate Judge Eifert's Findings and Recommendation. The failure of any party to file such objections within the time allowed 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).

Objections to the Proposed Findings and Recommendation were due by January 27, 2020. Neither party filed any objections to the Magistrate Judge's Findings and Recommendation.

Accordingly, the court adopts the Finding and Recommendation of Magistrate Judge Eifert as follows:

1. Petitioner's Motion to Respond and Dismiss, (ECF No. 10), is **GRANTED**;
2. Petitioner's Petition for a Writ of Habeas Corpus under Section 2241, (ECF No. 1), is **DISMISSED without prejudice**; and
3. The Clerk is directed to remove this case from the court's active 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.

## **II. Other Pending Motions**

Since Magistrate Judge Eifert submitted her Findings and Recommendation, petitioner has filed two motions. The first was filed on May 21, 2020, and was an emergency sentence modification request. (ECF No. 12.) Petitioner requested the court modify her sentence to allow her complete her sentence through RRC placement or home confinement, and to do so by waiving the requirement to exhaust administrative remedies. This same issue was resolved in Magistrate Judge Eifert's Findings and Recommendation, and so the court hereby **DENIES without prejudice** petitioner's motion for emergency sentence modification request.

The second motion was filed on June 18, 2020, and is a second motion to voluntarily dismiss her Petition for a Writ of Habeas Corpus under Section 2241, and attached to this motion is a new Section 2241 petition where petitioner now claims she has exhausted her administrative remedies. (ECF Nos. 13 and 13-1.) The court hereby **DENIES as moot** petitioner's second motion to voluntarily dismiss, (ECF No. 13), and **ORDERS** the Clerk of Court to open a new case and enter the attached Section 2241 petition,

(ECF Nos. 13-1 and 13-2), as a Section 2241 petition for writ of habeas corpus in the newly created matter.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to counsel of record and unrepresented parties.

**IT IS SO ORDERED** this 24th day of June, 2020.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge