

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

MICHAEL D. HICKS,

Petitioner,

v.

CIVIL ACTION NO. 2:08-1365

**DAVID BALLARD, Warden,
Mount Olive Correctional Complex,**

Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the court is petitioner's Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254. (Doc. No. 1.) By Standing Order entered August 1, 2006, and filed in this case on November 25, 2008, this matter was referred to United States Magistrate Judge Mary E. Stanley. Pursuant to 28 U.S.C. § 636(b), the Standing Order directs Magistrate Judge Stanley to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge Stanley submitted her Proposed Findings and Recommendation ("PF & R") on December 18, 2009, recommending that this court deny respondent's motion to dismiss (Doc. No. 11) and find that the instant petition was timely filed. (Doc. No. 27.)

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted seventeen days, including three mailing days, in which to file any objections to Magistrate Judge

Stanley's PF & R. Under § 636(b), the failure of any party to file objections within the appropriate time frame constitutes a waiver of that 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 (1985). Neither party has filed objections to the PF & R, and the time period for doing so has now elapsed.

Having reviewed the Proposed Findings and Recommendation filed by Magistrate Judge Stanley, the court hereby (1) **CONFIRMS AND ACCEPTS** the findings and conclusions contained therein (Doc. No. 27); (2) **DENIES** respondent's Motion to Dismiss Petition as Untimely Filed (Doc. No. 11); and (3) **DIRECTS** that the petition be permitted to go forward on the merits. This matter shall remain referred to Magistrate Judge Stanley for further proceedings.

The Clerk is directed to forward copies of this Memorandum Opinion and Order to all counsel of record and to any unrepresented party.

It is **SO ORDERED** this 1st day of February, 2010.

ENTER:



David A. Faber
Senior United States District Judge