

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

CHARLESTON

TEX HOLBROOK, II,

Petitioner,

v.

Case No. 2:09-cv-01251

DAVID BALLARD, Warden,
Mount Olive Correctional Complex,

Respondent.

PROPOSED FINDINGS AND RECOMMENDATION

For the reasons set forth in the Memorandum Opinion and Order filed this day, the undersigned proposes that the presiding District Judge **FIND** that Petitioner has not completed the process of exhausting his available state remedies.

It is respectfully **RECOMMENDED** that this civil action be dismissed without prejudice for failure to exhaust available state remedies.

The parties are notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Joseph R. Goodwin, Chief United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), Rule 8(b) of the Rules Governing Proceedings in the United States District Courts Under Section 2254 of Title 28, United States Code, and Rule 45(c) of the Federal Rules of Criminal

Procedure, the parties shall have ten days (filing of objections) and then three days (service/mailing) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be served on Chief Judge Goodwin.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to Petitioner.

November 23, 2009
Date



Mary E. Stanley
United States Magistrate Judge