

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

CHARLESTON DIVISION

CORY SIMPSON,

Petitioner,

v.

CIVIL ACTION NO. 2:10-cv-01071

CHARLES KING,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the court is the petitioner's habeas corpus petition filed pursuant to 28 U.S.C. § 2254. This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to the court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted proposed findings of fact and recommended that the court dismiss the petition, without prejudice, for failure to exhaust state court remedies. Neither party has filed objections to the Magistrate Judge's findings and recommendation.

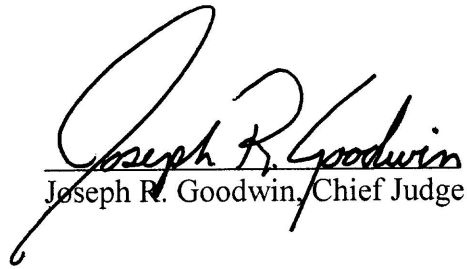
Accordingly, the court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge, **DENIES** the petitioner's letter-form motion to excuse exhaustion [Docket 8], and **DISMISSES** the petition without prejudice.

The court has additionally 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." *Id.* § 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 court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Stanley, counsel of record, and any unrepresented party.

ENTER: October 20, 2010


Joseph R. Goodwin, Chief Judge