

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

MICHAEL THOMPSON,

Petitioner,

v.

Civil Action No. 2:10-01361

STATE OF WEST VIRGINIA,

Respondent.

MEMORANDUM OPINION AND ORDER

The court having received the Proposed Findings and Recommendation ("PF&R") of the United States Magistrate Judge filed on December 14, 2010, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B); and having reviewed the record in this proceeding; and there being no objections filed by either the respondent or the petitioner to the PF&R¹; and it appearing proper so to do, it is ORDERED that the findings and conclusions made in the PF&R be, and they hereby are, adopted by the court.

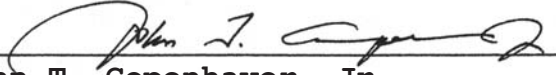
It is, accordingly, ORDERED that petitioner's section 2254 petition be, and it hereby is, denied without prejudice inasmuch as he has failed to exhaust his state remedies.²

¹On January 10, 2011, the court ordered that the PF&R be sent to petitioner's new address after the return by the United States Postal Service of the earlier mailing of the PF&R to his former place of incarceration. By that order, petitioner was given leave to file objections until January 25, 2011.

²As noted in the PF&R, the magistrate judge construed petitioner's original filing, made under 28 U.S.C. § 2241, as in actuality seeking relief under section 2254. Inasmuch as that construction is entirely appropriate, it is adopted by the court.

The Clerk is directed to forward copies of this written opinion and order to the petitioner, all counsel of record, and the magistrate judge.

DATED: April 1, 2011



John T. Copenhaver, Jr.
United States District Judge