

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

**CHARLESTON DIVISION**

ROBERT E. BENNETT,

Petitioner,

v.

CIVIL ACTION NO. 2:14-cv-10133

MARVIN C. PLUMLEY,

Respondent.

**ORDER**

This action was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Judge Tinsley submitted proposed findings and recommended [Docket 3] that I dismiss the plaintiff's Petition for Writ of Mandamus for Immediate Release from Custody ("Petition") [Docket 1]. Judge Tinsley's Proposed Findings and Recommendation ("PF&R") recommended I deny the petition "as being legally frivolous and failing to state a claim upon which relief can be granted." (PF&R [Docket 3], at 3-4). As noted in the PF&R, "[t]o the extent that the petitioner is seeking mandamus relief, he is asking a federal court to order a state court or its employees to act in a particular manner. A federal writ of mandamus will not lie to compel a state officer to perform a duty owed to a petitioner." (*Id.* at 2).

The PF&R instructed the plaintiff that he had seventeen days to file objections to the PF&R with the court (fourteen days for the filing of objections and three days for service and mailing). (*See* PF&R [Docket 3], at 4). The PF&R further instructed the plaintiff that failure to file written

objections would constitute a waiver of de novo review of the PF&R. (*See id.*). Despite this notice, rather than file objections to the PF&R, the plaintiff appealed the PF&R to the Fourth Circuit. (*See* Notice of Appellate Case Opening [Docket 4]).

I have reviewed the PF&R and construed the plaintiff's appeal as an objection to it. I hereby **ADOPT** the PF&R and **FIND** that this court lacks jurisdiction over the Petition. The Petition [Docket 1] is **DENIED**. The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: August 5, 2014



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE