

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

**CHARLESTON DIVISION**

RAYMOND ELSWICK,

Petitioner,

v.

CIVIL ACTION NO. 2:14-cv-29300

MARVIN PLUMLEY,

Respondent.

**ORDER**

Pending before this court are Petitioner Raymond Elswick's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 [Docket 4]; Motion for Default Judgment [Docket 12]; and Motion to Hold 28 U.S.C. § 2254 Petition for Writ of Habeas Corpus in Abeyance, or in the alternative, to Dismiss Without Prejudice [Docket 15]. Also pending is Respondent's Motion to Dismiss Petition for Failure to Exhaust and Timeliness [Docket 9]. The petition and motions were referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission to this court of proposed findings of fact and a recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B) (2012). On May 1, 2015, the Magistrate Judge submitted proposed findings of fact and recommended this court to rule as follows:

1. DENY without prejudice Elswick's Petition for Writ of Habeas Corpus [Docket 4] on the basis that Elswick failed to exhaust his state court remedies as to some of his claims;
2. DENY without prejudice Respondent's Motion to Dismiss [Docket 9];

3. GRANT Elswick's Motion to Hold 28 U.S.C. § 2254 Petition for Writ of Habeas Corpus in Abeyance, or in the alternative, to Dismiss Without Prejudice [Docket 15], to the extent that it seeks a stay of proceedings;
4. GRANT a STAY to Elswick to pursue his state court remedies for his unexhausted claims on the condition that Elswick pursue his state court remedies within thirty days of entry of this Order;
5. Hold Elswick's habeas petition in ABEYANCE, pending exhaustion of state court remedies, and require Elswick to return to federal court within thirty days of exhausting those remedies to seek a lift of the stay;
6. STRIKE Ground 13 of Elswick's Petition for Writ of Habeas Corpus [Docket 4]; and
7. DENY and DISMISS without prejudice Elswick's Motion for Entry of Default Judgment [Docket 12].

Neither party has filed objections to the Magistrate Judge's findings and recommendations. A district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." § 636(b)(1)(C). The court is not, however, required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). As the parties have not filed objections in this case, the court **ADOPTS** and **INCORPORATES** herein the findings and recommendation of the Magistrate Judge and **ORDERS** judgment consistent with the findings and recommendation.

Accordingly, Elswick's Petition for Writ of Habeas Corpus [Docket 4] and Respondent's Motion to Dismiss [Docket 9] are **DENIED without prejudice**. I **ORDER** that Elswick's habeas petition be **STAYED** and **HELD IN ABEYANCE** for thirty days from entry of this Order so that Elswick can pursue his unexhausted claims in state court, and I **DIRECT** Elswick to return to federal court within thirty days of exhausting his state court remedies to seek a lift of the stay. Furthermore, Ground 13 of Elswick's Petition for Writ of Habeas Corpus is **STRICKEN**, and Elswick's Motion for Entry of Default Judgment [Docket 12] is **DENIED** and **DISMISSED**.

The court **DIRECTS** the Clerk to send a copy of this Order to Magistrate Judge Eifert, counsel of record, and any unrepresented party.

ENTER: June 1, 2015



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JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE