

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

CHARLESTON DIVISION

LARRY CLEMENT,

Petitioner,

v.

CIVIL ACTION NO. 2:15-cv-02320

DAVID BALLARD,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the Court are Petitioner's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, (ECF No. 2), and Defendant's Motion to Dismiss, or in the alternative Motion for Stay and Abeyance, (ECF No. 10). By Standing Order entered on May 7, 2014, and filed in this case on March 18, 2015, this action was referred to United States Magistrate Judge Cheryl A. Eifert for submission of proposed findings and a recommendation for disposition ("PF&R"). (ECF No. 4.) Magistrate Judge Eifert filed her PF&R on September 22, 2015, recommending that this Court grant Defendant's motion insofar as it requests stay and abeyance, deny without prejudice Petitioner's request for habeas corpus relief, grant Petitioner a stay to pursue state court remedies, and hold Petitioner's habeas petition in abeyance pending exhaustion of state court remedies. (ECF No. 12 at 2.)

The Court is not 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). Failure to file

timely objections constitutes a waiver of de novo review and the Plaintiff's right to appeal this Court's order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

Objections to the PF&R in this case were due on October 9, 2015. To date, no objections have been filed.

Accordingly the Court **ADOPTS** the PF&R, (ECF No. 12), **DENIES WITHOUT PREJUDICE** Petitioner's request for habeas corpus relief, (ECF No. 2), **GRANTS** Defendant's Motion to Dismiss, or in the alternative Motion for Stay and Abeyance, (ECF No. 10), insofar as it requests stay and abeyance, **STAYS** this case to allow Petitioner to pursue state court remedies for his unexhausted claims, and **HOLDS IN ABEYANCE** Petitioner's habeas petition pending exhaustion of state court remedies. The Court **ORDERS** that the stay be conditioned upon Petitioner pursuing his state court remedies within thirty days of the entry of this Order. The Court further **ORDERS** that Petitioner return to this Court no less than thirty days after exhausting his state court remedies to request that the stay be lifted.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: November 2, 2015



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE