

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

CHARLESTON DIVISION

TERRANCE A. MCARTHUR,

Petitioner,

v.

CIVIL ACTION NO. 2:22-cv-00297

STATE OF WEST VIRGINIA,

Respondent.

MEMORANDUM OPINION AND ORDER

On July 21, 2022, the Petitioner, proceeding *pro se*, filed his *Application to Proceed Without Prepayment of Fees and Costs* (Document 1) and his *Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (Document 2). By *Standing Order* (Document 4) entered on July 22, 2022, this action was referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.

On November 14, 2022, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 7) wherein it is recommended that the Petitioner's *Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (Document 2) be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b) and L. R. Civ. P. 41.1., that this action be removed from the Court's docket, and that the Petitioner's *Application to Proceed*

Without Prepayment of Fees and Costs (Document 1) be denied as moot. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by November 14, 2022.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. 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 Petitioner'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).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Petitioner's *Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (Document 2) be **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 41(b) and L. R. Civ. P. 41.1., that this action be **REMOVED** from the Court's docket, and that the Petitioner's *Application to Proceed Without Prepayment of Fees and Costs* (Document 1) be **DENIED AS MOOT**.

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

ENTER: December 13, 2022



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA