

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

HUNTINGTON DIVISION

TERRY L. BUXTON,

Petitioner,

v.

CIVIL ACTION NO. 3:16-4489

DAVID BALLARD, Warden,
Mount Olive Correctional Complex,

Respondent.

MEMORANDUM OPINION AND ORDER

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(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that Petitioner's request for a stay and abeyance (ECF No. 19) be granted; Respondent's Motion to Dismiss (ECF No. 15) be denied, without prejudice, as premature, but Respondent's alternate request for a stay and abeyance be granted; Petitioner be granted a stay so that he may pursue his state court remedies for his unexhausted claims and that the stay be conditioned on Petitioner pursuing his state court remedies within thirty (30) days of the date that the order to stay is entered; and Petitioner's habeas petition be held in abeyance pending exhaustion of state court remedies, and Petitioner be required to return to federal court within thirty (30) days after he has exhausted his state court remedies and seek to lift the stay. Neither party has filed objections to the Magistrate Judge's findings and recommendations.

Accordingly, the Court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and **ORDERS** that Petitioner's request for a stay and abeyance (ECF No. 19) be **GRANTED**; Respondent's Motion to Dismiss (ECF No. 15) be **DENIED, without prejudice**, as premature, but Respondent's alternate request for a stay and abeyance be **GRANTED**; Petitioner be **GRANTED** a **STAY** so that he may pursue his state court remedies for his unexhausted claims and that the stay be conditioned on Petitioner pursuing his state court remedies within **thirty (30) days** of the date that the order to stay is entered; and Petitioner's habeas petition be held in **ABEYANCE** pending exhaustion of state court remedies, and Petitioner by required to return to federal court within **thirty (30) days** after he has exhausted his state court remedies and seek to lift the stay, consistent with the findings and recommendations.

The Court **DIRECTS** the Clerk to forward copies of this written opinion and order to all counsel of record, and any unrepresented parties.

ENTER: April 26, 2017



ROBERT C. CHAMBERS, CHIEF JUDGE