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

## **BECKLEY DIVISION**

GREGORY SCHOENINGER,

Petitioner,

v.

CIVIL ACTION NO. 5:08-cv-00981

T. R. CRAIG and BUREAU OF PRISONS.

Respondents.

## MEMORANDUM OPINION AND ORDER

The Court has reviewed the Petitioner's August 11, 2008 Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in State or Federal Custody (Document 1).

By *Standing Order* (Document 2) entered on August 11, 2008, this action was referred to the Honorable R. Clarke VanDervort, 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 June 28, 2011, the Magistrate Judge submitted *Proposed Findings and Recommendation* (Document 5) wherein it is recommended that this Court dismiss the Petitioner's *Application* and remove this action from the Court's docket.

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 Application (Document 1) be **DISMISSED** and that this action be **REMOVED** 

from the Court's docket.

The Court has additionally considered whether to grant a certificate of appealability. See 28

U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the

denial of a constitutional right." Id. § 2253(c)(2). The standard is satisfied only upon a showing that

reasonable jurists would find that any assessment of the constitutional claims by this Court is

debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v.

Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee,

252 F.3d 676, 683-84 (4th Cir. 2001). The Court concludes that the governing standard is not

satisfied in this instance. Accordingly, the Court **DENIES** a certificate of appealability.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge

VanDervort, counsel of record, and any unrepresented party.

ENTER:

July 20, 2011

IRENE C. BERGER

UNITED STATES DISTRICT JUDGE

SOUTHERN DISTRICT OF WEST VIRGINIA

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