

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

BECKLEY DIVISION

RODNEY PLUMLEY,

Petitioner,

v.

CIVIL ACTION NO. 5:09-cv-00677
(Criminal No. 5:05-cr-00224)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Petitioner Rodney Plumley, acting *pro se*, (“Petitioner”) filed a motion construed by the Court as a writ of habeas corpus pursuant to 28 U.S.C. § 2255. (Dockets 309, 359.) On June 16, 2009, this Court referred Petitioner’s motion to Magistrate Judge R. Clarke VenDervort for submission of proposed findings of fact and a recommendation (“PF&R”) pursuant to 28 U.S.C. § 636(b)(1)(b). (Docket 361.) On May 7, 2012, Magistrate Judge VanDervort issued a PF&R recommending the dismissal of petitioner’s motion with prejudice as untimely filed. (Docket 402.) Magistrate Judge VanDervort specifically recognized that the statute of limitations to which Petitioner’s motion is subject may be tolled under certain circumstances, found no such circumstances, but he specifically instructed Petitioner to set forth such conditions in his response to the PF&R, if any existed. (*Id.* at 6-7.)

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). In addition, failure

to file timely objections constitutes a waiver of de novo review and Petitioner's right to appeal this Court's Order. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge VanDervort's PF&R were due on May 24, 2012, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). To date, no objections have been filed.

Accordingly, the Court hereby (1) **DENIES** Petitioner's motion [Docket 309]; (2) **DENIES** Petitioner's Application to Proceed IFP [Docket 363]; (3) **DENIES AS MOOT** Petitioner's Motion for Discovery [Docket 362]; and (4) **DIRECTS** the Clerk to remove this action from the Court's active docket.

The Clerk is further directed to provide a copy of this Order to all counsel of record, the petitioner, *pro se*, and Magistrate Judge VanDervort.

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: June 21, 2012



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE