

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

BECKLEY DIVISION

JERMAINE BANKS,

Petitioner,

v.

CIVIL ACTION NO. 5:15-cv-06979

BUREAU OF PRISONS F.C.I. BECKLEY,
WEST VIRGINIA and JOE COAKLEY,

Respondents.

MEMORANDUM OPINION AND ORDER

On June 1, 2015, the Petitioner, proceeding *pro se*, filed his *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 June 1, 2015, 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. Subsequently, by *Order* (Document 3) entered on January 6, 2016, the case was referred to the Honorable Omar J. Aboulhosn, 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 September 14, 2017, Magistrate Judge Aboulhosn submitted a *Proposed Findings and Recommendation* (Document 6) wherein it is recommended that the Petitioner's *Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in State or Federal Custody* (Document 1) be construed as a Complaint filed pursuant to Bivens v. Six Unknown Named Agents of the Federal

Bureau of Narcotiss, 403 U.S. 388, 395-97, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971); that the Petitioner's Complaint (Document 1) be dismissed; and that this matter be removed from the Court's docket.

Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by October 2, 2017, and none were filed by either party. 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 a party'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 Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in State or Federal Custody* (Document 1) be **CONSTRUED** as a Complaint filed pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotiss*, 403 U.S. 388, 395-97, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971); that the Petitioner's Complaint (Document 1) be **DISMISSED**; and that this matter be **REMOVED** from the Court's docket.

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

ENTER: October 6, 2017



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA