

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

BECKLEY DIVISION

ROBERT H. BARNETT,

Petitioner,

v.

CIVIL ACTION NO. 5:18-cv-00279

FRANCISCO QUINTANA, *Warden*,

Respondent.

MEMORANDUM OPINION AND ORDER

On February 8, 2018, 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). Also pending in the matter are the *Respondent United States Motion to Dismiss or, in the Alternative, to Transfer* (Document 11) filed on June 6, 2018, and the Petitioner's letter-form motion to add a claim or relief (Document 18) filed on July 5, 2018.

By *Standing Order* (Document 4) entered on February 12, 2018, 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 December 18, 2018, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 27) wherein it is recommended that:

1. 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 denied as to the claims contained therein;

2. The *Respondent United States Motion to Dismiss or, in the Alternative, to Transfer* (Document 11) be granted;
3. 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 dismissed with prejudice, and removed from the Court's docket;
4. The Petitioner's letter-form motion to add a claim or relief (Document 18) be granted;
5. The Petitioner's claim, as set forth in the Petitioner's Addendum to *Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in State or Federal Custody* (Document 13) and supporting memorandum (Document 14) be transferred to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631 and 28 U.S.C.A. § 2255(h); and
6. This action be dismissed with prejudice, and removed from the Court's docket.

Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by January 7, 2019, 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 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:

1. 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 **DENIED** as to the claims contained therein;

2. The *Respondent United States Motion to Dismiss or, in the Alternative, to Transfer* (Document 11) be **GRANTED**;
3. 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 **DISMISSED with prejudice**, and **REMOVED** from the Court's docket;
4. The Petitioner's letter-form motion to add a claim or relief (Document 18) be **GRANTED**;
5. The Petitioner's claim, as set forth in the Petitioner's Addendum to *Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in State or Federal Custody* (Document 13) and supporting memorandum (Document 14) be **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631 and 28 U.S.C.A. § 2255(h); and
6. This action be **DISMISSED with prejudice**, and **REMOVED** from the Court's docket.

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: January 18, 2019



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA