

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

August 19, 2025

Christopher M. Wolpert
Clerk of Court

SAMUEL PATRICK CAIN, JR.,

Petitioner - Appellant,

v.

CARRIE BRIDGES,

Respondent - Appellee.

No. 25-6070
(D.C. No. 5:23-CV-01150-PRW)
(W.D. Okla.)

ORDER

Before BACHARACH, MORITZ, and ROSSMAN, Circuit Judges.

This matter grew out of a commutation and disagreement over the terms. But we need not resolve that disagreement because the petitioner (Mr. Samuel Patrick Cain, Jr.) does not challenge one of the district court's independent rationales for denying relief.

When his sentence was commuted, Mr. Cain was serving a term of 40 years, with the final 20 years suspended. Upon issuance of the commutation, Mr. Cain was released. But he then committed an act that violated his terms, leading the state district court to revoke the suspended sentence. But Mr. Cain argued that the commutation had wiped away the

entirety of his sentence, including the part that had been suspended. The state courts rejected Mr. Cain's claim. He then filed a federal habeas petition, but the district court denied relief.

He wants to appeal. To do so, however, he needs a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). We can grant a certificate only if Mr. Cain has shown that the district court's ruling was reasonably debatable. *Clark v. Oklahoma*, 468 F.3d 711, 713 (10th Cir. 2006).

The district court gave two separate reasons for denying habeas relief:

1. The claim involves state law, not federal law, and habeas relief isn't available for violations of state law.
2. Mr. Cain failed to present his constitutional claim in state court, and it's too late to do so now. So his constitutional claim is subject to anticipatory procedural default.

R. at 434–41, 457–61 (report and recommendation of the magistrate judge and the district judge's order adopting the report and recommendation).

Mr. Cain requests a certificate of appealability, challenging the first ground. But he fails to address the second ground. So even if we were to credit Mr. Cain's appellate argument, we would need to affirm based on his failure to challenge the district court's reliance on an anticipatory procedural default. *See Lebahn v. Nat'l Farmers Union Unif. Pension Plan*, 828 F.3d 1180, 1188 (10th Cir. 2016) (stating that we must affirm when the appellants fail to challenge one of the district court's independent grounds

for dismissal). As a result, the district court's denial of relief is not reasonably debatable.

Certificate of appealability denied and matter dismissed.

Entered for the Court

Robert E. Bacharach
Circuit Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

SAMUEL PATRICK CAIN, JR.,)
Petitioner,)
v.) Case No. CIV-23-1150-PRW
CARRIE BRIDGES,)
Respondent.)

REPORT AND RECOMMENDATION

Petitioner, a *pro se*¹ state prisoner, has filed a Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254. (Doc. 1).² United States District Judge Patrick R. Wyrick referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). (Doc. 4). Respondent filed a Response (Doc. 9), along with the initial plea hearing transcript (Initial Plea Tr.), revocation hearing transcript (Revocation Hr'g Tr.), sentencing transcript (S. Tr.), and the state trial court record (R.). (Docs. 13,

¹ A *pro se* litigant's pleadings are liberally construed "and held to a less stringent standard than formal pleadings drafted by lawyers." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991); *see Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). But the court cannot serve as Petitioner's advocate, creating arguments on his behalf. *See Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

² Citations to the parties' filings and attached exhibits will refer to this Court's CM/ECF pagination. Citations to state trial court transcripts and the state trial court record will refer to the original pagination.

14). Petitioner filed a Reply. (Doc. 12). For the reasons stated below, the undersigned recommends that the Petition be **DENIED**.

I. Background

Petitioner is a state prisoner currently incarcerated at James Crabtree Correctional Center in Helena, Oklahoma. (Doc. 1, at 1); *see also* OK DOC#: 378575, Oklahoma Department of Corrections (“ODOC”) OK Offender.³ On August 10, 2016, in Logan County District Court Case No. CF-2015-175, Petitioner pleaded guilty to one count of possession of a controlled dangerous substance with intent to distribute (Count One) and one count of unlawful possession of drug paraphernalia (Count Two). (Doc. 1, at 1; Doc. 9, at Exs. 3, 4). Petitioner was sentenced to forty years of state imprisonment with twenty years suspended on Count One and to one year in county jail with all time suspended on Count Two, with the sentences to run concurrently and credit for time served. (Doc. 1, at 1; Doc. 9, at Exs. 3, 5).

On April 9, 2020, the Governor of Oklahoma signed a Certificate of Commutation regarding Petitioner’s conviction on Count One, as well as four other convictions across two other cases.⁴ (Doc. 1, at Ex. 1). The Commutation Certificate states the following:

³ <https://okoffender.doc.ok.gov/> (last visited Jan. 14, 2025).

⁴ In addition to Petitioner’s conviction on Count One in Logan County Case No. CF-2015-175, the Commutation Certificate lists Petitioner’s convictions on one count of possession of a controlled dangerous substance in Logan County District Court Case No CF-2015-242, one count of possession of a controlled dangerous substance with intent to distribute in Oklahoma County District Court Case No. CF-2015-4062, and two counts of possession of controlled dangerous substance in the same Oklahoma County case, CF-2015-4062. (Doc. 1, at Ex. 1). Only the revocation of the suspended portion of Petitioner’s sentence in Logan County District Court Case No. CF-2015-175 is at issue in the Petition.

Samuel P. Cain, #378575, was convicted of [the five convictions referenced above] and received concurrent sentences totaling 20 years in the custody of the Oklahoma Department of Corrections. Samuel P. Cain was committed to the Oklahoma Department of Corrections in the case(s) listed above.

After an impartial investigation, study, and deliberate consideration of all the facts and circumstances, the Oklahoma Pardon and Parole Board . . . recommended to the Governor the above offender for commutation of the current sentences to 9 years.

Pursuant to the authority vested in me by Section 10 of Article VI of the Oklahoma Constitution, I, J. Kevin Stitt, as Governor of the State of Oklahoma, do hereby grant Samuel P. Cain, a commutation of the above sentence(s) to: time served.

(*Id.* at Ex. 1).

On April 16, 2020, Petitioner was released from the custody of the Oklahoma Department of Corrections. (Doc. 1, at Ex. 4). On March 25, 2021, the State filed a Motion to Revoke Suspended Sentence in Logan County District Court Case No. CF-2015-175, stating that Petitioner violated the terms and conditions of his probation because he “was arrested for Trafficking Illegal Drugs Methamphetamine, Possession of Firearm after Former conviction of a Felony in Logan County case number CF-2021-48.” (Doc. 9, at Ex. 7).⁵ Petitioner argued before the Logan County District Court that the revocation motion should be dismissed because Petitioner’s sentence in CF-2015-175 had been commuted in full, but the court denied the request to dismiss. (*Id.* at Ex. 9). The State and Petitioner waived the right to a hearing within twenty days, and the hearing on the revocation motion was held on February 18, 2022. (R., at 50-52). Petitioner stipulated that

⁵ The State also filed an Amended Motion to Revoke Suspended Sentence on August 6, 2021, presumably to correct a clerical error. (See Doc. 9, at Ex. 8).

“if there is probation left, . . . he’s in violation of that probation,” but reserved the right to appeal the issue of whether the suspended portion of his sentence was commuted. (Revocation Hr’g, at 5-7). The Logan County District Court found that Petitioner violated the rules and conditions of probation, (*id.* at 13), and revoked Petitioner’s twenty-year suspended sentence, (Doc. 9, at Ex. 2). Petitioner appealed the revocation to the Oklahoma Court of Criminal Appeals (“OCCA”), (*id.* at Ex. 10), and the OCCA affirmed the revocation, (Doc. 1, at Ex. 3).

II. The Petition

Petitioner filed the instant Petition on December 13, 2023. (Doc. 1, at 14). Petitioner alleges one ground for habeas relief: that the state district court lacked jurisdiction to revoke the suspended portion of Petitioner’s sentence because the entire sentence had been commuted to time served. (*Id.* at 5). For relief, Petitioner requests that the Court “grant habeas corpus, vacate judgment and sentence, [and] dismiss revocation order.” (*Id.* at 14).

Respondent contends that (1) the Petition should be construed as a petition filed under 28 U.S.C. § 2241 instead of § 2254, (Doc. 9, at 8-10); (2) Petitioner’s claim is unexhausted and anticipatorily barred, (*id.* at 10-16); (3) Petitioner’s claim is not reviewable by this Court because it presents an issue of state law, (*id.* at 16-18); and (4) Petitioner’s claim fails on the merits because revocation of Petitioner’s suspended sentence was not fundamentally unfair in violation of the due process clause, (*id.* at 18-23).

III. Analysis

A. The Petition Should Be Construed Under § 2241.

Respondent argues that the Petition, which was brought under 28 U.S.C. § 2254, (*see* Doc. 1, at 1), should be reviewed as if it were brought under 28 U.S.C. § 2241, (*id.* at 8-10). In his Reply, Petitioner agrees. (Doc. 12, at 1). The undersigned agrees with both Respondent and Petitioner and construes the Petition as a petition for a writ of habeas corpus under § 2241. *See Leatherwood v. Allbaugh*, 861 F.3d 1034, 1041-42 (10th Cir. 2017) (“A state prisoner’s challenge to the revocation of a suspended sentence is properly brought under § 2241 based on our circuit precedent. . . . By contrast, a state prisoner’s federal habeas challenge to the validity of an underlying conviction or sentence must typically be brought under § 2254.”); *see also Hooks v. Crow*, No. CIV-21-00592-PRW, 2022 WL 446825, at *1 (W.D. Okla. Feb. 14, 2022) (construing a habeas petition on a § 2254 form as a petition under § 2241 since the petitioner challenged the revocation of a suspended sentence).

B. Petitioner’s Habeas Claim Is Unexhausted and Procedurally Barred.

Respondent argues that Petitioner’s sole claim for habeas relief — that the state district court lacked jurisdiction to revoke Petitioner’s suspended sentence — is unexhausted and anticipatorily barred because Petitioner never properly presented the claim before the OCCA as an issue of federal law. (Doc. 9, at 12-16). In his Reply, Petitioner argues that he asserted a due process argument in his direct appeal. (Doc. 12, at 1). The undersigned agrees with Respondent, as set forth fully below.

1. Petitioner's Due Process Claim Is Unexhausted.

“A habeas petitioner is generally required to exhaust state remedies whether his action is brought under § 2241 or § 2254.” *Montez v. McKinna*, 208 F.3d 862, 866 (10th Cir. 2000). Exhaustion of a habeas claim requires the petitioner to have “fairly presented” the claim to the state court. *Albright v. Raemisch*, 601 F. App’x 656, 658 (10th Cir. 2015). “As a general rule, fair presentment means that the federal issues have been ‘properly presented to the highest state court, either by direct review of the conviction or in a postconviction attack.’” *Id.* (quoting *Brown v. Shanks*, 185 F.3d 1122, 1124 (10th Cir.1999)).

It is insufficient for exhaustion for a petitioner to present a claim to the highest state court as only an issue of state law. *Duncan v. Henry*, 513 U.S. 364, 365-66 (1995); *see also Anderson v. Harless*, 459 U.S. 4, 6 (1982) (“It is not enough that all the facts necessary to support the federal claim were before the state courts, or that a somewhat similar state-law claim was made. . . . [T]he habeas petitioner must have fairly presented to the state courts the substance of his federal habeas corpus claim.”) (internal citations and quotation marks omitted). “If state courts are to be given the opportunity to correct alleged violations of prisoners’ federal rights, they must surely be alerted to the fact that the prisoners are asserting claims under the United States Constitution.” *Duncan*, 513 U.S. at 365-66. Moreover, it is insufficient for a petitioner to have merely appended a constitutional argument to a state law claim. *Zuniga v. Falk*, 618 F. App’x 407, 411 (10th Cir. 2015) (holding that a “conclusory reference to a fair trial and the Constitution” at the “tail end of [the petitioner’s] state law argument” did not constitute exhaustion of a claim in state

court). “The crucial inquiry is whether the *substance* of the petitioner’s claim has been presented to the state courts in a manner sufficient to put the courts on notice of the federal constitutional claim.” *Grant v. Royal*, 886 F.3d 874, 890 (10th Cir. 2018) (internal quotation marks omitted and emphasis added); *see also Cole v. Zavaras*, 349 F. App’x 328, 331 (10th Cir. 2009) (holding a habeas claim to be unexhausted when the petitioner “state[d] in a conclusory fashion that the alleged error violated his federal constitutional rights” without citing federal case law or connecting his claim to the allegedly violated rights).

In the Petition, Petitioner alleges that the state district court lacked jurisdiction to revoke his suspended sentence. (Doc. 1, at 5). As acknowledged by Respondent, (Doc. 9, at 12), Petitioner’s claim is not explicitly presented as a constitutional claim but could be liberally construed as an assertion that the revocation of his suspended sentence violated his due process rights, especially considering Petitioner’s reference to due process in the conclusion of his appellate brief to the OCCA. (*See* Doc. 9, at Ex. 10, at 12); *see also Yellowbear v. Wyo. Atty. Gen.*, 525 F.3d 921, 924 (10th Cir. 2008) (“Absence of jurisdiction in the convicting court is indeed a basis for federal habeas corpus relief cognizable under the due process clause.”). Thus, the issue is whether Petitioner exhausted his due process claim by fairly presenting it to the OCCA.

In his appellate brief to the OCCA, Petitioner argued that (1) the Commutation Certificate explicitly granted a *commutation*, which is inherently unconditional, unlike parole; (2) the Commutation Certificate’s reference to a twenty-year sentence was a typographical error, as a docket entry from the relevant Oklahoma Pardon and Parole Board

meeting accurately reflected Petitioner's forty-year sentence; (3) Petitioner's Oklahoma Department of Corrections Certificate of Release stated that Petitioner would not be under supervision; (4) the Governor must have intended to fully commute Petitioner's sentence because he commuted hundreds of other non-violent offenses in full to alleviate prison overcrowding in 2019 and 2020; and (5) ambiguity in the Commutation Certificate should be interpreted in Petitioner's favor. (Doc. 9, at Ex. 10, at 8-12). In the conclusion of the brief, Petitioner stated, “[r]evocation hearings must comport with fundamental due process, *Gagnon v. Scarpelli*, 411 U.S. 778, 791 (1973), and no State shall deprive any person of liberty without due process of law. U.S. Const. amend. XIV.” (*Id.* at Ex. 10, at 12). Petitioner does not mention due process anywhere else in the brief. (*See id.* at Ex. 10).

In the Summary Opinion affirming the revocation, the OCCA did not address whether the revocation of Petitioner's suspended sentence violated his due process rights but instead based its decision on the plain language of the Commutation Certificate. (*See* Doc. 1, at 3). The OCCA determined that only the “period of incarceration” of Petitioner's sentence had been commuted because the Commutation Certificate reflected that “‘20 years’ was commuted to ‘time served,’” and “[a]cts of grace must be strictly construed based on the text within the four corners of the document.” (*Id.* at Ex. 3, at 1-3) (citing *Osborn v. United States*, 91 U.S. 474, 477 (1875)).

Petitioner's cursory mention of fundamental due process in the conclusion of his appellant's brief clearly failed to present the substance of a federal due process claim to the OCCA. Under OCCA Rule 3.5(A)(5), an appellant's brief must comply with the following:

[e]ach proposition of error shall be set out separately in the brief. Merely mentioning a possible issue in an argument or citation to authority does not constitute the raising of a proposition of error on appeal. Failure to list an issue pursuant to these requirements constitutes waiver of alleged error.

Petitioner's cursory reference to fundamental due process in the conclusion of his brief did not comply with the OCCA's requirement that each argument be separately set out, and the OCCA's failure to address due process in its Summary Opinion suggests that the OCCA did not identify a due process issue as separately set out in the brief. Thus, no federal claim was fairly presented to the OCCA, leaving Petitioner's sole ground for habeas relief unexhausted. *See Cole v. Trammell*, 755 F.3d 1142, 1176 (10th Cir. 2014) (holding a claim to be unexhausted because the petitioner only mentioned it in a footnote of his appellant's brief and thus did not comply with OCCA Rule 3.5(A)(5)).

2. Petitioner's Habeas Claim Is Subject To a Procedural Bar, or Alternatively, an Anticipatory Procedural Bar.

"Under the doctrine of procedural default, claims that are defaulted in state court on adequate and independent state procedural grounds will not be considered by a habeas court." *Simpson v. Carpenter*, 912 F.3d 542, 570 (10th Cir. 2018) (internal quotation marks, alteration, and ellipsis omitted); *see also Martinez v. Ryan*, 566 U.S. 1, 9 (2012) ("[A] federal court will not review the merits of claims, including constitutional claims, that a state court declined to hear because the prisoner failed to abide by a state procedural rule.").

"A state procedural default is 'independent' if it relies on state law, rather than federal law." *Smith v. Workman*, 550 F.3d 1258, 1274 (10th Cir. 2008). "A state procedural default is 'adequate' if it is firmly established and regularly followed." *Id.*; *see Ellis v. Hargett*, 302 F.3d 1182, 1186 (10th Cir. 2002).

Under OCCA Rule 3.5(A)(5), a petitioner's failure to separately set out an issue in his or her appellant's brief "constitutes waiver of alleged error." "Rule 3.5(A)(5) is an adequate and independent state procedural rule." *Harmon v. McCollum*, No. CIV-10-16-C, 2016 WL 886118, at *7 (W.D. Okla. Jan. 20, 2016), *report and recommendation adopted*, 2016 WL 890949 (W.D. Okla. Mar. 8, 2016). The Tenth Circuit has held that the OCCA's lack of acknowledgement of an improperly raised claim is tantamount to deeming the claim waived under OCCA Rule 3.5(A)(5) and leaves the claim procedurally barred on federal habeas review. *Cole*, 755 F.3d at 1176. Here, Petitioner failed to separately present a due process claim to the OCCA, and the OCCA failed to acknowledge such a claim, consistent with OCCA Rule 3.5(A)(5). Thus, Petitioner's due process claim is procedurally barred from federal habeas review.

Even if the claim were not deemed waived under OCCA Rule 3.5(A)(5), Petitioner would be barred from returning to state court to properly raise it. Under Oklahoma law, "issues that were not raised previously on direct appeal, but which could have been raised, are waived for further review." *Logan v. State*, 293 P.3d 969, 973 (Okla. Crim. App. 2013) (citing Okla. Stat. tit. 22, § 1086). The Tenth Circuit "has found Oklahoma's bar of claims not raised on direct appeal to be independent and adequate with respect to claims other than ineffective assistance of counsel." *Smith v. Workman*, 550 F.3d 1258, 1274 (10th Cir. 2008). Thus, even if Petitioner's due process claim were not procedurally barred, it would be *anticipatorily* procedurally barred because Petitioner could have properly raised it on direct appeal but did not. *See Anderson v. Sirmons*, 476 F.3d 1131, 1140 n.7 (10th Cir. 2007) ("Anticipatory procedural bar occurs when the federal courts apply procedural bar

to an unexhausted claim that would be procedurally barred under state law if the petitioner returned to state court to exhaust it.”) (internal quotation marks omitted).

A federal court may consider claims that have been or will be defaulted in state court on adequate and independent state procedural grounds only if “the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice.” *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). Petitioner has not addressed Respondent’s contention that his claim is subject to an anticipatory procedural bar. (See Doc. 12). Since Petitioner has not alleged cause for his default and actual prejudice stemming from the alleged constitutional violation, or that a fundamental miscarriage of justice will result from the Court’s failure to consider his claim, Petitioner has not overcome the procedural bar. *See Spears v. Mullin*, 343 F.3d 1215, 1252-53 (10th Cir. 2003) (applying procedural bar where the petitioner failed to allege cause and prejudice or a fundamental miscarriage of justice); *Cannon v. Gibson*, 259 F.3d 1253, 1266 (10th Cir. 2001) (same).

Because Petitioner’s sole ground for habeas relief is unexhausted before the state court and procedurally barred from federal habeas review, the Petition should be dismissed.

C. Petitioner’s Habeas Claim Presents an Issue of State Law.

Respondent alternatively argues that Petitioner’s habeas claim presents a matter of state law for which federal habeas relief is unavailable. (Doc. 9, at 16-18). In his Reply, Petitioner argues that “the federal due process clause requires a state’s compliance with its own rules when liberty interests are involved.” (Doc. 12, at 2) (citing *Hicks v. Oklahoma*,

447 U.S. 343 (1980)). The undersigned concludes that Petitioner's claim presents only an issue of state law and does not trigger federal due process protections.

"In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States. *Estelle v. McGuire*, 502 U.S. 62, 68 (1991) (citing 28 U.S.C. § 2241). Liberally construed, Petitioner alleges that the revocation of his suspended sentence violated his due process rights under the Fourteenth Amendment because his entire sentence, including the suspended portion of his sentence, had been commuted. *See supra* III.B.1. Thus, at the crux of Petitioner's claim is the state's interpretation of the Commutation Certificate. (Doc. 1, at 5). A due process claim only exists where a person has been deprived of a liberty or property interest. *Swarthout v. Cooke*, 562 U.S. 216, 219 (2011). The Supreme Court has held that "an inmate has no constitutional or inherent right to commutation of his sentence." *Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1981). Additionally, this Court has clarified that in Oklahoma, "[t]he decision to commute a sentence lies solely within the discretion of the Governor, and a prisoner has no claim of entitlement or expectation that it will occur." *Dopp v. Patton*, No. CIV-14-453-D, 2014 WL 3700852, at *2 (W.D. Okla. July 25, 2014) (citing Okla. Const. art VI, § 10; Okla Stat. tit. 57, §§ 332, 332.2(A)).

Since a prisoner has no entitlement to the commutation of his or her sentence in Oklahoma, a prisoner's challenge to a commutation decision does not invoke Fourteenth Amendment due process protections but rather presents an issue of state law. *See Rose v. Hodges*, 423 U.S. 19, 21-22 (1975) ("Whether or not the sentences imposed upon respondents were subject to commutation by the Governor, and the extent of his authority

under the circumstances of this case, are questions of Tennessee law It was not the province of a federal habeas court to re-examine those questions."); *see also Sellars v. Estelle*, 536 F.2d 1104 (5th Cir. 1976) (holding that challenge to commutation "sanctioned by Texas law" and "upheld by Texas courts" was issue of state law). It follows that a challenge regarding the interpretation of the scope of a commutation order is also a matter of state law. Leaving commutation matters to the states comports with the Supreme Court's dictum in *Dumschat* that "commutation decisions have not traditionally been the business of courts; as such, they are rarely, if ever, appropriate subjects for judicial review." 452 U.S. at 464.

As Petitioner argues in his Reply, (Doc. 12, at 2), federal habeas review is not available to address issues of state law, but "[a] prisoner may seek relief [] if a state law decision is so fundamentally unfair that it implicates federal due process." *Leatherwood*, 861 F.3d at 1043. To implicate federal due process, a state's violation of its own law "must be 'arbitrary in the constitutional sense,' that is, it must shock the judicial conscience." *Aycox v. Lytle*, 196 F.3d 1174, 1180 (10th Cir. 1999) (quoting *Collins v. City of Harker Heights*, 503 U.S. 115, 129-30 (1992)). Petitioner has not presented to the Court a violation of state law that is arbitrary or conscience-shocking — only a disagreement in the interpretation of Petitioner's Commutation Certificate. "The State, of course, has a fundamental interest in appropriately punishing persons . . . who violate its criminal laws." *Bearden v. Georgia*, 461 U.S. 660, 669 (1983).

Thus, even if a procedural bar did not apply to Petitioner's claim, this Court could still not review the claim under habeas corpus.

IV. Recommended Ruling and Notice of Right to Object

For the reasons discussed above, the undersigned recommends that the Petition for habeas relief (Doc. 1) be **DENIED**.

The court advises the parties of their right to object to this Report and Recommendation by February 4, 2025, under 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2). The court further advises the parties that failure to make timely objection to this report and recommendation waives their right to appellate review of both factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues and terminates the referral to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 14th day of January, 2025.


AMANDA MAXFIELD GREEN
UNITED STATES MAGISTRATE JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**