

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION at LEXINGTON

JOSEPH C. BOWDEN,	)	
	)	
Petitioner,	)	Civil Action No. 07-cv-359-JMH
	)	
v.	)	
	)	<b>MEMORANDUM OPINION AND ORDER</b>
STEVE HANEY, Warden,	)	
	)	
Respondent.	)	
	)	
	)	

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    This matter is before the Court on the Report and Recommendation of Magistrate Judge James B. Todd. [Record No. 12.] Said action was referred to the magistrate for the purpose of reviewing the merit of Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and Respondent's motion to dismiss and/or motion for summary judgment. [Record Nos. 1 & 10.] Magistrate Judge Todd has recommended that Respondents' motion to dismiss and/or motion for summary judgment be granted and that the petition for writ of habeas corpus be denied with prejudice. The time for objections has lapsed and no objections have been filed. This matter is now ripe for review.

    Petitioner was found guilty of (1) kidnaping (Count 1); (2) first degree sexual abuse (Count 2); (3) resisting arrest (Count 3); and (4) being a second-degree persistent felony offender (Count 4). Petitioner was convicted on all counts and received a total sentence of forty (40) years. Petitioner appealed his conviction

to the Supreme Court of Kentucky. That court affirmed his conviction on all counts. See *Bowden v. Commonwealth*, No. 2002-SC-0378-MR, 2003 WL 22415617 (Ky. Oct. 23, 2003). Petitioner filed a motion to vacate, set aside judgment and sentence, pursuant to RCr 11.42, in the trial court. The trial court denied Petitioner's motion, and Petitioner appealed that denial to the Kentucky Court of Appeals. The Kentucky Court of Appeals affirmed the trial court's denial. See *Bowden v. Commonwealth*, No. 2005-CA-002424-MR, 2006 WL 2919153 (Ky. App. Oct. 13, 2006). The Kentucky Court of Appeals denied Petitioner's petition for rehearing, and the Supreme Court of Kentucky subsequently denied his petition for discretionary review of the decision of the Kentucky Court of Appeals. *Bowden v. Commonwealth*, No. 2005-CA-002424-MR, slip op. (Ky. App. Dec. 7, 2006); *Bowden v. Commonwealth*, No. 2007-SC-64-D, slip op. (Ky. May 17, 2007).

In his petition, Petitioner argues (1) that his federal due process rights were violated when the state court failed to dismiss his kidnaping charge due to insufficient evidence, (2) that his right to effective assistance of counsel was violated under the United States Constitution because his counsel misinformed him of the maximum sentencing exposure, (3) that his Fourteenth Amendment due process rights were violated when the trial court failed to accept his guilty plea, and (4) that his Fifth and Fourteenth Amendment rights were violated when the post-conviction court

decided not to hold an evidentiary hearing.

The Court has studied the Magistrate Judge's Report and Recommendation. The Court concurs with Magistrate Judge Todd's finding that Petitioner is not entitled to federal habeas relief on any of his claims for the reasons stated in the Magistrate Judge's Report and Recommendation. The Court adopts the facts, procedural history, and analysis set forth by the Magistrate as the Court's own.

Accordingly, **IT IS ORDERED:**

(1) That the Report and Recommendation of the magistrate [Record No. 12] be, and the same hereby is, **ACCEPTED** and **ADOPTED**;

(2) That Respondents' motion to dismiss and/or motion for summary judgment [Record No. 10] be, and the same hereby is, **GRANTED**;

(3) That Petitioner's petition for a writ of habeas corpus [Record No. 1] be, and the same hereby is, **DENIED WITH PREJUDICE**;  
and

(4) That this action be, and the same hereby is, **DISMISSED** and **STRICKEN** from the active docket.

This the 17th day of September, 2008.



**Signed By:**

***Joseph M. Hood*** *JMH*

**Senior U.S. District Judge**