

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

PHILLIP SCHMIDT,

Petitioner,

v.

JOHN COLEMAN, Warden,

Respondent.

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CASE NO. 3: 11CV2488

JUDGE DONALD C. NUGENT

**MEMORANDUM OPINION
AND ORDER**

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Vernelis K. Armstrong. The Report and Recommendation (ECF #12) is ADOPTED by this Court. Moreover, Petitioner’s Motion for Extension of Time to File Objections is DENIED. (ECF #13.) Accordingly, Petitioner’s Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 (ECF #1) and Motion for Abeyance (ECF #9) are DENIED.

On December 8, 2009, Petitioner pled guilty to Counts 5, 9, and 10 of an indictment charging him with: (1) reckless homicide, in violation of Ohio Rev. Code § 2903.04(B); (2) corrupting another with drugs, in violation of Ohio Rev. Code § 2925.02(A)(3); (C)(1); and (3) trafficking in drugs, a violation of Ohio Rev. Code § 2925.03(A)(1); (C)(1). Claiming that the plea resulted from duress or undue influence, Petitioner’s counsel filed a motion to withdraw

petitioner's plea two days prior to sentencing. Petitioner was given a hearing pursuant to Crim. R. 11(C), and the judge gave Petitioner the opportunity to proceed to trial or enter his plea. In a judgment dated January 22, 2010, the court overruled the motion to withdraw and proceeded to sentencing. Petitioner was sentenced to a total term of 13 years, with a mandatory period of three years post-release control under the supervision of the parole board.

Petitioner filed this Petition for Writ of Habeas Corpus on November 16, 2011 following a direct appeal to the Mercer County, Ohio Court of Common Pleas and then the Third District Court of Appeals, and other motions for post-conviction relief. In the Petition for Writ of Habeas Corpus, Petitioner seeks remand to the state court for retrial on four bases. Petitioner's Motion for Abeyance, filed on March 21, 2012, seeks an order staying the proceedings and holding the petition in abeyance until such time as the Petitioner exhausts his state remedies.

On February 7, 2012, the Court referred this case to Magistrate Judge Armstrong for a report and recommendation pursuant to Local Rule 72.2(b)(2). On October 29, 2012, Magistrate Judge Armstrong recommended that this Court overrule Petitioner's Habeas Petition and Motion for Abeyance.

Petitioner failed to timely file objections to the Report and Recommendation. Objections were due on November 12, 2012. On November 19, 2012, after the time for objections had already expired, Petitioner moved to extend the time to object until December 6, 2012 (ECF #13). Petitioner's Motion for Extension of Time to File Objection[s] is denied for two reasons. First, it lacks any explanation why the Motion for Extension was filed after the time for objections had already passed. Section, Petitioner's cursory claim that he could not timely object because of limited access to the prison's law library is unsupported, and thus fails to establish

good cause for an extension of time. Accordingly, the Report and Recommendation is unchallenged.

The Court has reviewed the Report and Recommendation *de novo*. See *Thomas v. Arn*, 474 U.S. 140 (1985). The Court finds Magistrate Judge Armstrong's Report and Recommendation to be well-written, well-supported, and correct. Therefore, the Report and Recommendation (Document #12) is ADOPTED in its entirety. Petitioner's Motion for Extension of Time to File Objections is DENIED. (ECF #13.) For all of these reasons, Petitioner's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 (ECF #1) and Motion for Abeyance (ECF #9) are DENIED.

Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); FED. R. APP. P. 22(b).

IT IS SO ORDERED.



DONALD C. NUGENT
United States District Judge

DATED: November 21, 2012