

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

<b>Robby B. Barnett,</b>	)	<b>CASE NO. 3:15 CV 2195</b>
	)	
<b>Petitioner,</b>	)	<b>JUDGE PATRICIA A. GAUGHAN</b>
	)	
<b>vs.</b>	)	
	)	
<b>Neil Turner, Warden</b>	)	<b><u>Memorandum of Opinion and Order</u></b>
	)	
<b>Respondent.</b>	)	

**Introduction**

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Ruiz (Doc. 10) which recommends denial of the Petition for Writ of Habeas Corpus pending before the Court. Petitioner filed objections to the recommendation. For the following reasons, the Report and Recommendation is ACCEPTED.

**Standard of Review**

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, “The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any

proposed finding or recommendation.”

### **Discussion**

Petitioner is incarcerated as a result of his 2013 jury conviction for involuntary manslaughter, illegal manufacture of a controlled substance, and assembly or possession of chemicals used to manufacture controlled substance. The Petition asserts four grounds for relief. The Magistrate Judge found grounds three and four to be procedurally defaulted. He rejected grounds one and two on the merits. The Magistrate Judge also rejected ground three to the extent it involved the deprivation of a fundamentally fair trial.

Petitioner generally objects to the Magistrate Judge’s conclusion that the state appellate court reasonably applied clearly established Supreme Court precedent to his ineffective assistance of counsel claim in ground one. Having stated no specific objection, the Court has reviewed the Report and Recommendation and not found it clearly erroneous or contrary to law. Petitioner disagrees that grounds three and four should be dismissed, but does not demonstrate how they are not procedurally defaulted. As for ground two, petitioner only puts forth an unsupported assertion that the Magistrate erred in concluding that petitioner did not raise a free-standing claim that his right against self-incrimination was violated.

Accordingly, petitioner’s objections have no merit.

### **Conclusion**

For the reasons set forth herein and for the reasons set forth in the Magistrate Judge’s Report and Recommendation, which is incorporated herein, the Petition for Writ of Habeas Corpus is denied. Furthermore, 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 that 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.

/s/ Patricia A. Gaughan \_\_\_\_\_

PATRICIA A. GAUGHAN

United States District Judge

Dated: 12/14/16