

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

KENNETH W. GIBSON,	:	
	:	NO. 1:10-CV-00008
Petitioner,	:	
	:	
	:	
v.	:	<b>OPINION AND ORDER</b>
	:	
	:	
WARDEN, HOCKING CORRECTIONAL	:	
FACILITY,	:	
	:	
Respondent.	:	

This matter is before the Court on the Magistrate Judge’s Report and Recommendation, (doc. 12), to which no objections were filed.

Petitioner filed a petition for habeas corpus with respect to his 2007 plea and sentencing for involuntary manslaughter and corrupting another with drugs, for which he was sentenced to concurrent eight-year terms of imprisonment to be served consecutively to a three-year term in another case (doc. 12). He presents two grounds for relief in his petition: first, the trial court erred when it refused to allow Petitioner to withdraw his guilty plea; and second, he received ineffective assistance of trial counsel (doc. 2).

The Magistrate Judge determined that Petitioner’s claim regarding the refusal to allow him to withdraw his guilty plea raises issues of state law only, which are not cognizable here

(doc. 12). Further, the Magistrate Judge concluded that the underlying claims of constitutional error are barred from review by this Court because they are time-barred. Consequently, the Magistrate Judge recommends that Petitioner's petition be denied with prejudice; that a certificate of appealability not issue; and that the Court certify that any appeal would not be taken in good faith.

Having reviewed this matter pursuant to 28 U.S.C. §636(b), the Court finds no clear error on the face of the record and, indeed, finds the Report and Recommendation to be thorough, well-reasoned and correct. See Advisory Committee Notes to Fed. R. Civ. P. 72; Thomas v. Arn, 474 U.S. 140, 150(1985)("It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings"). Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation in its entirety (doc. 12). Therefore, Petitioner's habeas corpus petition is DENIED WITH PREJUDICE. Further, the Court FINDS that a certificate of appealability should not issue with respect to the claims alleged in the petition because "jurists of reason" would not find it debatable whether this Court is correct in its procedural rulings and because Petitioner has failed to make a substantial showing of the denial of a constitutional right. Slack v. Daniel, 529 U.S.

473 (2000).

Finally, the Court CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that with respect to any application by Petitioner to proceed on appeal in forma pauperis, an appeal of this Order would not be taken in good faith and therefore the Court DENIES Petitioner leave to appeal in forma pauperis. Fed. R. App. P. 24(a); Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

SO ORDERED.

Dated: April 13, 2011

/s/ S. Arthur Spiegel

S. Arthur Spiegel  
United States Senior District Judge