

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Michael Simmons,	:	
	:	
Petitioner	:	Civil Action 2:09-cv-01077
	:	
v.	:	Judge Sargus
	:	
Michael Sheets, Warden,	:	Magistrate Judge Abel
	:	
Respondent	:	

ORDER

This matter is before the Court on petitioner Michael Simmons's October 15, 2013 motion for relief from final judgment (doc. 27).

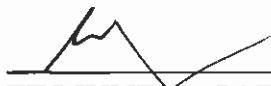
On December 2, 2009, Simmons filed his petitioner for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 16, 2013, the Court adopted the Magistrate Judge's February 23, 2013 Report and Recommendation recommending dismissal of the complaint. On August 22, 2011, petitioner filed a notice of appeal, which was dismissed by the Sixth Circuit as untimely. On April 10, 2013, the Sixth Circuit issued a decision denying Simmons's motion for permission to file a second or successive habeas corpus petition.

Petitioner argues that the Court committed plain error and exposed him to multiple punishments for the same offense in violation of his rights under the Double Jeopardy Clause when it failed to merge his guilty verdicts and instead entered separate

convictions and separate prison terms. When the Court overruled his objections, the case upon which it relied had been vacated by *State v. Johnson*, 128 Ohio St. 3d. 153 (2010). As a result, petitioner maintains that his tenth assignment of error would have been found to have merit had the Court used the current law at the time of the decision.

Because the Sixth Circuit has denied petitioner permission to file a second or successive habeas corpus petition, petitioner Michael Simmons's October 15, 2013 motion for relief from final judgment (doc. 27) is denied.

10-22-2013
DATE



EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE