

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

JAMES L. CHATFIELD,

Petitioner

v.

CASE NO. 2:11-CV-00911

JUDGE JAMES L. GRAHAM

MAGISTRATE JUDGE E.A. PRESTON DEAVERS

DEB TIMMERMAN-COOPER,

WARDEN,

Respondent.

OPINION AND ORDER

On November 3, 2011, the Magistrate issued a *Report and Recommendation* pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts recommending that the instant petition for a writ of habeas corpus be dismissed without prejudice as unexhausted. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, Petitioner's objections are **SUSTAINED**. Respondent is **DIRECTED** to file a response to the Petition that complies with Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts within twenty-one (21) days. Petitioner's motion to amend the petition with the document attached thereto, Doc. 9, is **GRANTED**.

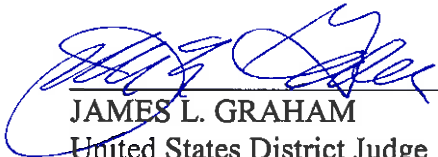
Petitioner raises lengthy objections to the facts outlined in the Magistrate Judge's *Report and Recommendation*, as summarized by the Ohio Fifth District Court of Appeals. Petitioner also objects to the Magistrate Judge's recommendation of dismissal of his habeas corpus petition as unexhausted. For the purposes of this Order, only the later objection is pertinent. Petitioner may raise his objections to the factual findings of the state appellate court (which are presumed to be correct under 28 U.S.C. § 2254(e)), in any subsequent filings in this proceeding. Petitioner now indicates that he

filed his claims of ineffective assistance of appellate counsel on appeal to the Ohio Supreme Court, as well as in an application to reopen the appeal pursuant to Ohio Appellate Rule 26(B). He has attached, in support of his objections, a copy of the appellate court's dismissal of his Rule 26(B) application, and the propositions of law he raised on direct appeal in the Ohio Supreme Court. *See Exhibits to Objections*. In view of the foregoing, it appears that Petitioner has exhausted his claims of ineffective assistance of appellate counsel.

Therefore, Petitioner's objections are **SUSTAINED**. Respondent is **DIRECTED** to file a response to the Petition that complies with Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts within twenty-one (21) days. Petitioner's motion to amend the petition with the document attached thereto, Doc. 9, is **GRANTED**.

IT IS SO ORDERED.

Date: November 30, 2011



JAMES L. GRAHAM
United States District Judge