

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

ZACHARY A. HALLEY,

Petitioner,

v.

WARDEN, MADISON CORRECTIONAL  
INSTITUTION,

Respondent.

CASE NO. 13-CV-199

JUDGE JAMES L. GRAHAM

MAGISTRATE JUDGE KEMP

OPINION AND ORDER

On August 12, 2013, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed. This matter is now before the Court on Petitioner's *Objection*, Doc. No. 15, to the Magistrate Judge's *Report and Recommendation*. For the following reasons, Petitioner's *Objection*, Doc. No. 15, is **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner argues that § 2254 violates separation of powers and therefore is unconstitutional. Aside from this argument, Petitioner raises no new arguments he did not already present in his habeas corpus petition.

Assuming, *arguendo*, that Petitioner is free to raise his newly asserted argument regarding a violation of the separation of powers,<sup>1</sup> for the reasons discussed in *Harrison v.*

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<sup>1</sup> Petitioner failed to raise a claim regarding separation of powers in his initial and timely filed habeas corpus petition. Thus, this claim plainly is time barred under the one-year statute of limitations set forth in 28 U.S.C. § 2244(d). Under these circumstances, this claim may only be considered if it is of the same "time and type," or tied to a "common core of operative facts" as those claims raised in the initial, timely filed, habeas corpus petition. *Mayle v. Felix*, 545 U.S. 644, (2005). Such are not the circumstances here.

*Forest*, No. 10-cv10723, 2012 WL 2847567 (E.D. Mich. July 11, 2012), this claim plainly lacks merit:

Petitioner asserts that 28 U.S.C. § 2254(d)(1) violates the separation of powers by mandating the law to be applied by federal courts and removing their power to adjudicate constitutional issues. The Fourth and Ninth Circuits both have rejected this argument:

In amending section 2254(d)(1), Congress has simply adopted a choice of law rule that prospectively governs classes of habeas cases; it has not subjected final judgments to revision, nor has it dictated the judiciary's interpretation of governing law and mandated a particular result in any pending case. And amended section 2254(d) does not limit any inferior federal court's independent interpretive authority to determine the meaning of federal law in any Article III case or controversy. Under the AEDPA, we are free, if we choose to decide whether a habeas petitioner's conviction and sentence violate any constitutional rights. Section 2254(d) only places an additional restriction upon the scope of the habeas remedy in certain circumstances.

*Green v. French*, 143 F.3d 865, 874–75 (4th Cir.1998) (internal citations), *abrogated on other grounds by Williams v. Taylor*, 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000).

Section 2254(d) merely limits the source of clearly established law that the Article III court may consider, and that limitation served to govern prospectively classes of habeas cases rather than offend the court's authority to interpret the governing law and to determine the outcome in any pending case.

*Duhaime v. Ducharme*, 200 F.3d 597, 601 (9th Cir.2000); *see also, Evans v. Thompson*, 518 F.3d 1, 4–10 (1st Cir.2008). For these reasons, the Court likewise rejects the petitioner's claim that the AEDPA standard of review violates the separation of powers by encroaching on the Court's exercise of the judicial power.

*Id.*

Moreover, while this Court is cognizant that liberal construction of pleadings is afforded the filings of *pro se* incarcerated federal habeas corpus petitioners, *see Haines v. Kerner*, 404 U.S. 519, 595-96 (1972), Petitioner nonetheless has forfeited his right to appeal by failing to provide a specific basis for his objections to the Magistrate Judge's *Report and Recommendation*. *See Baker v. Warden*, No. 5:04-CV-1953 (N.D. Ohio, March 30, 2006)(Typically, unspecified objections to a Magistrate Judge's *Report and Recommendation* waive the right to review); *see also Smith v. Konteh*, No. 1:05-cv-494, 2009 WL 799095, at \*3 n. 3 (W.D. Mich. March 23, 2009)(same).

A party must file specific objections to the report or the party's right to further review will be waived. *Id.* Moreover, "only those specific objections to the magistrate's report made to the district court will be preserved for appellate review; making some objections but failing to raise others will not preserve all the objections a party may have." *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir.1987) (citations omitted).


*Lewis v. Caruso*, No. 10-cv-14804-BC, 2011 WL 3359912, at \*1 (E.D. Mich. Aug. 4, 2011).

Further, and for the reasons already well detailed in the Magistrate Judge's *Report and Recommendation*, a *de novo* review provides no basis for federal habeas corpus relief.

For all of these reasons, and for the reasons already set forth in the Magistrate Judge's *Report and Recommendation*, Petitioner's *Objection*, Doc. No. 15, is **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

**IT IS SO ORDERED.**

Date: December 11, 2013

  
JAMES L. GRAHAM  
United States District Judge