

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

GARY MOLEN,

Petitioner,

-vs-

DEB TIMMERMAN-COOPER, Warden,

Respondent.

:

Case No. 3:11-cv-304

:

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

:

DECISION AND ORDER

This habeas corpus case is before the Court on Petitioner's Motion to Reconsider (Doc. No. 11) in which he asks that this Court reconsider its Order of December 19, 2011 (Doc. No. 10) denying his December 16, 2011, Motion for Extension of Time to January 24, 2012 (Doc. No. 9). In that Motion, which was filed after the Report and Recommendations recommending dismissal, he sought "a 60 day enlargement of time in which to reply to the Respondent's response to Petitioner's application for writ of habeas corpus." *Id.* at PageID 745.

The Magistrate Judge denied the motion for extension of time because a time for reply had been set in the Order for Answer, to wit, twenty-one days after the Return of Writ was filed. Because Petitioner neither filed a reply nor sought an extension of time before the expiration date, the Magistrate Judge denied the extension, although the time for file objections to the R&R was extended *sua sponte*.

Petitioner now says he never received a copy of the Order for Answer (Doc. No. 11, PageID

749). Examination of the docket shows that the deputy clerk who docketed the Order for Answer sent a copy to Respondent and also to Respondent's counsel, but did not send a copy to Petitioner or at least did not show in the relevant staff note that she had done so.

Therefore Petitioner's Motion is well taken. The Report and Recommendations are WITHDRAWN and Petitioner's time to file a reply is extended to and including February 1, 2012. December 28, 2011.

s/ **Michael R. Merz**
United States Magistrate Judge