

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

HOWARD WOOD, JR.
ADC #155339

PETITIONER

v.

No. 5:16CV00085-JLH

WENDY KELLEY, Director
Arkansas Department of Correction

RESPONDENT

ORDER

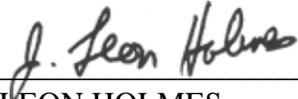
The Court has reviewed the Proposed Findings and Recommended Disposition submitted by United States Magistrate Judge Joe J. Volpe and petitioner's objections. After carefully considering the objections and making a de novo review of the record, the Court concludes that the Proposed Findings and Recommended Disposition should be, and hereby are, approved and adopted in their entirety as this Court's findings with the following additional comments. Wood's objections include an objection to the magistrate judge's holding that his claims regarding a mental evaluation are not cognizable in a federal habeas petition. Wood is correct that a defendant has a constitutional right not to be tried while he is legally incompetent. *Medina v. California*, 505 U.S. 437, 449, 112 S. Ct. 2572, 2579, 120 L. Ed. 2d 353 (1992). Wood argues that he has post-traumatic stress disorder and he has presented evidence to that effect. *See* Document #16 at 28-32.¹ Nevertheless, the fact remains that Wood told the trial judge during his plea colloquy that his post-traumatic stress disorder did not affect his thought process. In ruling on Wood's Rule 37 petition, the trial judge specifically found that Wood was competent when he pled guilty based on Wood's demeanor and his responsiveness to the questions asked by the judge. Document #13-2 at 85. While Wood claims and has presented evidence that he has post-traumatic stress disorder, he has alleged nothing that would

¹ It is not clear whether the medical records were part of the record on appeal in Wood's Rule 37 proceeding.

show that he was incompetent at the time he entered his plea of guilty, nor is there anything in the record that suggests that he was incompetent at that time. The Arkansas Supreme Court addressed Wood's claims regarding his mental health, noting that Wood had told the trial judge that he post-traumatic stress disorder did not affect his thought processes, that a petitioner is presumed to be competent, and that Wood had failed to point to specific evidence that he was not competent. Document #13-3 at 5-6. The decision of the Arkansas Supreme Court on that issue was not contrary to, nor did it involve an unreasonable application of, clearly established federal law. Neither did it result in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. *See* 28 U.S.C. § 2254(d).

IT IS, THEREFORE, ORDERED that Wood's cause of action is DISMISSED and the requested relief be denied. A certificate of appealability is denied.

SO ORDERED this 3rd day of October, 2016.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE