

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
at COVINGTON

CHRISTOPHER R. WISCHER, II.	)	
	)	
	)	
Plaintiff,	)	Action No. 2:13-CV-182-JMH
	)	
v.	)	
	)	
	)	<b>MEMORANDUM OPINION AND ORDER</b>
WESTERN DISTRICT.	)	
	)	
Defendants.	)	
	)	
	)	

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This matter is before the Court on the Recommended Disposition entered by Magistrate Judge J. Gregory Wehrman [Record No. 13]. Said action was referred to the magistrate for the purpose of reviewing the merit of Petitioner Wischer's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 [Record No. 1]. Following an initial review of the petition, the Court ordered Defendant to show cause why the matter should not be dismissed [Record No. 11], to which Petitioner responded [Record No. 12]. In his Recommended Disposition, the Magistrate Judge concludes that Petitioner has a post-conviction motion pending in state court and, thus, has not exhausted his

state remedies as required prior to filing a federal petition for a writ of habeas corpus and that, in any event, Petitioner did not name the correct responded in his Petition.

The Magistrate Judge filed his Report and Recommendation [Record No. 13] on November 13, 2013 advising Petitioner that particularized objections to same were due within fourteen days or further appeal would be waived. That time has now expired, and Petitioner has filed no objections.

Generally, "a judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). However, when the petitioner fails to file any objections to the Recommended Disposition, as in the case *sub judice*, "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard." *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Consequently, this Court adopts the reasoning set forth in the Recommended Disposition as its own.

Further, no certificate of appealability shall issue in this matter. "A certificate of appealability may issue

. . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order for a certificate to issue, Petitioner must be able to show that reasonable jurists could find in his favor, and the "question is the debatability of the underlying federal constitutional claim, not the resolution of that debate." *Miller-El v. Cockrell*, 537 U.S. 322, 342 (2003). In this case, reasonable jurists would not debate the denial of Petitioner's § 2254 motion or conclude that the issues presented are adequate to deserve encouragement to proceed further. *See id.*

Accordingly, **IT IS ORDERED:**

(1) that the Recommended Disposition of Magistrate Judge J. Gregory Wehrman [Record No. 13] is **ACCEPTED** and **ADOPTED;**

(2) that the Petition for a Writ of Habeas Corpus [Record No. 1] is **DISMISSED WITH PREJUDICE;** and

(3) that no certificate of appealability will issue

This the 12th day of December, 2013.



**Signed By:**

**Joseph M. Hood** *JMH*

**Senior U.S. District Judge**