

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at LEXINGTON

KELLY WAYNE GREENWELL,)
)
Plaintiff,)
)
v.)
)
COOKIE CREWS, Warden,)
Kentucky State Reformatory)
)
Defendant.)

Civil Case No.
12-cv-127-JMH

MEMORANDUM OPINION & ORDER

This matter is before the Court on the Report and Recommendation of Magistrate Judge Candace J. Smith [Record No. 8]. Said action was referred to the magistrate for the purpose of reviewing the merit of Petitioner Greenwell's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 [Record No. 1], in which he challenges his incarceration for a conviction in a Kentucky state court. Defendant filed an Motion to Dismiss or, in the Alternative, a Motion for Extension of Time to File an Answer [Record No. 5] in response to the Petition, arguing that the Petition is time-barred under the applicable limitations period. In her Report and Recommendation, the Magistrate Judge agrees with that assessment and recommends that the Petition be dismissed.

The Magistrate Judge filed her Report and Recommendation on August 17, 2012, advising Greenwell that particularized

objections to same were due within fourteen days of the date of service of the Report and Recommendation or further appeal would be waived. That time has now expired, and Greenwell 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 made by the magistrate judge." 28 U.S.C. § 636. However, when the petitioner fails to file any objections to the Report and Recommendation, 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 Report and Recommendation 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 Report and Recommendation of Magistrate Judge Candace J. Smith [Record No. 8] is **ACCEPTED** and **ADOPTED**;

(2) that Defendant's Motion to Dismiss or, in the Alternative, a Motion for Extension of Time to File an Answer [Record No. 5] is **GRANTED IN PART** and **DENIED AS MOOT IN PART**;

(3) that Greenwell's Petition for a Writ of Habeas Corpus [Record No. 1] is **DISMISSED**;

(4) that no certificate of appealability will issue.

This the 6th day of November, 2012.



Signed By:

Joseph M. Hood *JMH*

Senior U.S. District Judge