

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

JOHN SIMEON

PETITIONER

v.

CIVIL ACTION NO. 3:10CV-541-S

CLARK TAYLOR, WARDEN

RESPONDENT

MEMORANDUM OPINION AND ORDER

This matter is before the court for consideration of the Report and Recommendation of the United States Magistrate Judge that the petition for writ of habeas corpus filed by petitioner John Simeon under 28 U.S.C. § 2254 be denied. DN 27. The court has conducted a *de novo* review of those portions of the report to which Simeon has filed objections. Upon review of the magistrate judge's report in conjunction with the record in this matter, this court concludes that the magistrate judge's findings of fact, conclusions of law and recommendation should be accepted and adopted in their entirety.

Simeon's *pro se* objections contain many rambling, disconnected citations of authority which are of little use to the court. However, the objections to the magistrate judge's conclusions of law concerning a variety of challenges to the effectiveness of Simeon's trial and appellate counsel and to various evidentiary rulings during trial constitute a reiteration of Simeon's previous arguments. These arguments were thoroughly considered and addressed in the magistrate judge's report.

The magistrate judge correctly determined that a number of Simeon's challenges were procedurally defaulted. As noted by the magistrate judge, "claims forfeited under state law may support federal habeas relief only if the prisoner demonstrates cause for the default and prejudice from the asserted error." *Tolliver v. Sheets*, 594 F.3d 900, 928 (6th Cir. 2010). Simeon's contention that his counsel was ineffective on appeal was found to be insufficient to establish cause and prejudice, as the magistrate judge found that there was not a reasonable probability that Simeon would have prevailed had counsel raised these issues. *McFarland v. Yukins*, 356 F.3d 688, 699-700 (6th Cir. 2004).

Simeon failed to establish ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984). The magistrate judge also correctly found that there was no prosecutorial misconduct in the prosecuting attorney's charging decisions nor in the handling of evidence in the case, and Simeon was not denied a fundamentally fair trial, *citing Hamblin v. Mitchell*, 354 F.3d 482, 494 (6th Cir. 2003). Further, the magistrate judge found Simeon's claims of judicial and jury bias to be wholly meritless in light of the record, a finding with which this court agrees. These challenges therefore, were properly found defaulted, as they do not support a finding of cause and prejudice such as would excuse default.

The magistrate judge also correctly found that no double jeopardy violation was established by the admission of testimony of Simeon's daughter. Simeon contends that the admission of her testimony concerning claims of sexual abuse by him for which he was charged and convicted in 1986 constituted double jeopardy. The magistrate judge noted that this challenge concerning the admissibility of evidence does not implicate double jeopardy principles, *citing Ohio v. Johnson*, 467 U.S. 493, 499 (1984). Additionally, we note that the jury was not informed of Simeon's prior conviction for sexual abuse.

Finally, this court agrees with the conclusion of the magistrate judge that none of Simeon's claims raise a close question of Constitutional error. Simeon's challenges in this petition are wholly without merit. As we agree that no reasonable jurist could find debatable the conclusion that the claims in this petition fail on the merits, a certificate of appealability will be denied.

For the reasons set forth herein this date and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the Report and Recommendation of the United States Magistrate Judge (DN 27) is **ACCEPTED AND ADOPTED IN ITS ENTIRETY** and the objections of petitioner John Simeon thereto (DNs 30; 32) are **OVERRULED**. Further, for the reasons stated, a Certificate of Appealability will be **DENIED** as to each claim asserted in the petition.

A separate order and judgment will be entered this date in accordance with this memorandum opinion and order.

IT IS SO ORDERED.

December 4, 2013



**Charles R. Simpson III, Senior Judge
United States District Court**

cc:
Counsel of Record
Petitioner, *pro se*