

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LARRY M. SCHLEE,)	CASE NO. 1:07-cv-487
)	
Petitioner,)	JUDGE LIOI
)	
v.)	MAGISTRATE JUDGE
)	VECCHIARELLI
JESSE WILLIAMS, Warden,)	
)	
Respondent.)	ORDER

Respondent is directed to file a surreply addressing Petitioner's supplement to Ground Seven regarding the issue of double jeopardy. In the Return of Writ, Respondent asserts that the supplemental ground should be dismissed because Petitioner failed to comply with AEDPA's statute of limitations. Petitioner argues that his application for DNA testing tolls the running of the statute of limitations and that his supplemental ground is timely. The Sixth Circuit has yet to address this issue of whether an application for DNA testing tolls the statute of limitations and the two circuit courts that have addressed the issue have arrived at opposite conclusions. *See Brown v. Secretary for the Department of Corrections*, 530 F.3d 1335 (11th Cir. 2008); *Hutson v. Quarterman*, 508 F.3d 236 (5th Cir. 2007). As there is no clear precedent on this issue,

Respondent is directed to address the issue of double jeopardy on the merits.¹ Respondent shall file a surreply on or before December 17, 2008.

IT IS SO ORDERED.

s/ Nancy A. Vecchiarelli
NANCY A. VECCHIARELLI
UNITED STATES MAGISTRATE JUDGE

Date: December 4, 2008

¹ Typically, in habeas corpus actions, the Magistrate Judge issues a show cause order that states: "If the respondent claims the petition is time-barred, he or she also shall brief the merits unless there is United States Supreme Court or Sixth Circuit precedent directly on point in support of his or her statute of limitations argument." In the instant action no such show cause order was issued because the case was initially assigned to Magistrate Judge Hemann.