

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Damien Peterson,)	CASE NO. 1:09 CV 1012
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
vs.)	
)	
Keith Smith, Warden,)	<u>Memorandum of Opinion and Order</u>
)	
Respondent.)	

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Armstrong (Doc. 35) which recommends dismissal of the Petition for Writ of Habeas Corpus pending before the Court. For the following reasons, the Report and Recommendation is ACCEPTED.

Introduction

Petitioner, Damien Peterson, commenced this action with the filing of a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The Magistrate Judge issued her Report and Recommendation recommending that the Petition be dismissed. Petitioner has not filed objections to the Report and Recommendation.

Standard of Review

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, “The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.” When no objections have been filed this Court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See* Advisory Committee Notes 1983 Addition to Federal Rule of Civil Procedure 72.

Conclusion

The Magistrate Judge determined that the petition was procedurally defaulted with respect to his abuse of discretion ground, and that petitioner’s remaining grounds were without merit. Petitioner has not objected to the findings. This Court agrees with the reasoning and conclusions of the Magistrate Judge and, having found no clear error, completely adopts her factual and legal conclusions as its own and incorporates them herein by reference. Accordingly, for the reasons set forth in the Magistrate Judge’s Report and Recommendation, the Petition for Writ of Habeas Corpus is denied. Furthermore, the Court declines to issue a certificate of appealability. 28 U.S.C. § 2253(c).

IT IS SO ORDERED.

/s/Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Date: 5/06/11