

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Jeffrey Brown,)	CASE NO. 1:16 CV 838
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
vs.)	
)	
Margaret Bradshaw, Warden)	<u>Memorandum of Opinion and Order</u>
)	
Respondent.)	

Introduction

This matter is before the Court upon the Report and Recommendation of Magistrate Judge David Ruiz (Doc. 16) which recommends dismissal without prejudice of the Petition for Writ of Habeas Corpus pending before the Court. No objections to the recommendation were filed. For the following reasons, the Report and Recommendation is ACCEPTED.

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.

Discussion

The Court has made a clear error review and agrees with the following reasoning of the Magistrate Judge. Petitioner pleaded guilty in connection with two separate cases: CR-13-580090 and CR-13-580403. After the herein Petition was filed, petitioner filed two motions in the state court to withdraw his guilty plea. Petitioner appealed the denial of the motions. The state court of appeals ultimately dismissed the appeal in the 580090 case as moot given that, in the meantime, the trial court had vacated the guilty plea and conviction in that case. As petitioner would no longer be in state custody on that case, the Magistrate Judge concluded that the Petition based on that case should be dismissed as moot. With regard to 580403, petitioner moved again in the trial court in July 2017 to withdraw his plea on a basis stated in the court of appeals decision. As he is still litigating his guilty plea in that case in the state courts, petitioner’s first ground for relief herein has not been exhausted. To allow for exhaustion in the state court, the Petition should be dismissed without prejudice.

Having no objections, the Court has reviewed the Report and Recommendation and found no clear error. Accordingly, it accepts the recommendation.

Conclusion

For the reasons set forth herein and for the reasons set forth in the Magistrate Judge’s Report and Recommendation, which is incorporated herein, the Petition for Writ of Habeas

Corpus is dismissed without prejudice. Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed.R.App.P. 22(b).

IT IS SO ORDERED.

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

Dated: 3/8/18