

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Roberta Ratliffe,

Case No. 16-cv-1923

Petitioner

v.

MEMORANDUM OPINION

Cuyahoga County Sheriff Department, et al.,

Respondents

Before me is the Report and Recommendation of Magistrate Judge William H. Baughman, Jr. filed on May 9, 2017, in the above-entitled action. (Doc. No. 17). Under the relevant statute:

Within [fourteen (14)] days after being served a copy of these proposed Findings and Recommendation, any party who wishes to object must file and serve written objections or further appeal is waived.

United States v. Campbell, 261 F.3d 628, 631-32 (6th Cir. 2001) (citation omitted); *see also* 28 U.S.C. § 636(b)(1) (effective Dec. 1, 2009); Fed. R. Civ. P. 72(b)(2). In this case, the fourteen day period has elapsed and no objections have been filed.

The failure to file written objections to the Magistrate Judge's Report and Recommendation constitutes a waiver of a determination by the district court of an issue covered in the report.

Thomas v. Arn, 474 U.S. 140 (1985); *see also United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Following review of the Magistrate Judge's Report and Recommendation, I adopt the conclusion of the Report and Recommendation as the Order of the Court, but reject the R & R in part. (Doc. No. 17). At the outset, I adopt the Magistrate Judge's recommendation that the petition is not cognizable for federal review. Ratliffe asserted one ground of error in her § 2254 habeas petition, that the state erred in calculating her credit for time served. But "federal habeas corpus relief does not lie for errors of state law." *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990); *see also Estelle v.*

McGuire, 502 U.S. 62, 67-68 (1991) (“[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions.”). Since this is purely a question of state application of state law rather than a question of federal constitutional law, the sole ground for relief asserted in the petition is not cognizable for federal review and the petition must be dismissed.

I reject the R & R with respect to the procedural history because the procedural history of this case has changed since the time the R & R was issued. When Ratliffe filed this petition, her motion for recalculation of time served was still pending before the Cuyahoga County Court of Common Pleas and had been for over a year. Since there was no final order on the matter from the state court, Ratliffe had not yet exhausted her state court remedies and the petition was premature. It was not until August 16, 2017, over three months after the R & R was issued on May 9, 2017, that the state court granted Ratliffe’s motion.¹ Because of the additional 252 days granted as credit for time served, she was released from custody on August 22, 2017.² Ratliffe is no longer in custody and this petition must be dismissed as moot. *See* 28 U.S.C. § 2254(a).

For the foregoing reasons, I adopt in part and reject in part the Magistrate Judge’s R & R. (Doc. No. 17). Ratliffe’s § 2254 petition is dismissed because it is both moot and not cognizable for federal habeas review. (Doc. No. 1). Accordingly, Respondent’s Motion to dismiss is granted. (Doc. No. 15). Further, I certify, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of 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).

So Ordered.

s/ Jeffrey J. Helmick _____
United States District Judge

¹ *See attached:* Exhibit 1—Cuyahoga Court of Common Pleas Docket, Case No. CR-07-503672-A, *available at* http://cpdocket.cp.cuyahogacounty.us/CR_CaseInformation_Docket.aspx?q=2Gv3kan9edWghAj16TZp_A2; Exhibit 2—Journal Entry granting Petitioner’s motion for jail credit time filed August 16, 2017.

² *See attached:* Exhibit 3—ODRC record of Petitioner’s release from custody on August 22, 2017, *available at* <https://appgateway.drc.ohio.gov/OffenderSearch/Search/Details/W075859?enc=%7CRatliffe%7CRoberta%7C%7C%7C%7CAll%7C%7CName%7C-1%7C10%7C>.