

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MARCELUS DELON BIBBS,)	CASE NO. 1:16 CV 2069
)	
Petitioner,)	JUDGE DONALD C. NUGENT
)	
v.)	<u>ORDER ADOPTING</u>
)	<u>REPORT AND RECOMMENDATION</u>
JASON BUNTING, Warden,)	
)	
)	
Respondent.)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Kathleen B. Burke. The Report and Recommendation (ECF #17) is hereby ADOPTED. Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254 on August 17, 2016 challenging the constitutionality of his conviction and sentences. The Petition alleges nine grounds for relief centered around allegations of ineffective assistance of trial and appellate counsel, denial of his speedy trial rights, denial of due process of law, and double jeopardy. (ECF #1). Magistrate Judge Burke found that the petitioner’s claims were procedurally defaulted and/or otherwise lacked merit. She , therefore, recommended that the Petition be denied. The Petitioner sought and received three separate extensions of time within which to file his objections to the to the Magistrate’s Report and Recommendation, and objections were timely filed within the time granted by the extension. (ECF #18, 20, 21).

The Court has reviewed *de novo* those portions of the Magistrate Judge’s Report and

Recommendation to which objection has been made. *See* FED. R. CIV. P. 72(b). The Court finds Magistrate Judge Burke's Report and Recommendation to be thorough, well-written, well-supported, and correct. The Court finds that Petitioner's objections raise no arguments (factual or legal) that have not been fully addressed by the Magistrate's Report and Recommendation.

The Magistrate's Report and Recommendation fully and correctly addresses all of the Petitioner's claims and the Petitioner's objections are unwarranted. The Magistrate specifically explained why Mr. Bibbs' failure to appeal his petition to vacate or his App. R. 26(B) motion resulted in procedural default of his claims for ineffective assistance of appellate counsel. She also correctly determined that his ineffective assistance of trial counsel, and speedy trial claims were defaulted because he did not raise them on direct appeal. Further, the Magistrate correctly found that the delay in his re-sentencing did not violate federal Constitutional law, and did not prejudice him in any way. This Court, therefore, adopts the Magistrate's Report in its entirety, over the Petitioner's objections.

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 there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); FED. R. APP. P. 22(b). Petitioner's motion for habeas corpus is hereby DISMISSED because it presents claims that are either defaulted or are not cognizable on federal habeas review. IT IS SO ORDERED.

/s/ Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: September 14 , 2017