

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Hector Alvarado,)	CASE NO. 3:16 CV 2563
)	
Plaintiff,)	JUDGE PATRICIA A. GAUGHAN
)	
Vs.)	
)	
Warden,)	<u>Memorandum of Opinion and Order</u>
Ohio State Penitentiary,)	
)	
Defendant.)	

INTRODUCTION

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Jonathan D. Greenberg (Doc. 17) recommending that Petitioner’s Motion for Stay and Abeyance (Doc. 5) be GRANTED and that his Motion for Order Directing Respondent to Correct the Return (Doc. 14) be DENIED WITHOUT PREJUDICE. Neither party has filed objections to the Report and Recommendation.

STANDARD OF REVIEW

When objections are made to a Magistrate Judge’s Report and Recommendation, the district court reviews the case *de novo*. Federal Rule of Civil Procedure 72(b) provides in

pertinent part:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

As stated in the Advisory Committee Notes, "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." In *Thomas v. Arn*, 474 U.S. 140, 150 (1985), the Court held, "It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."

DECISION

This Court, having reviewed the Report and Recommendation and finding no clear error, hereby accepts the Magistrate Judge's Report and Recommendation. In accordance with that recommendation, this case is hereby stayed to allow Petitioner to exhaust his Second, Third, Seventh, and Ninth Grounds for Relief in state court. This stay is granted on the condition that Petitioner (1) file quarterly status reports in this Court regarding the progress of his state court appeal; and (2) seek reinstatement on this Court's active docket within thirty days of fully exhausting his state court remedies.

This case is hereby removed from the Court's active docket and administratively closed. This is purely an administrative device for the convenience of the Court and in no way affects the substantive or procedural rights of the parties in interest to proceed before this Court at a

later date. Nothing in this order shall be considered a dismissal or disposition of this matter.

IT IS SO ORDERED.

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

Dated: 3/3/17