

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ERIC J. WELLY,)	
)	CASE NO. 3:17CV600
Petitioner,)	
)	
v.)	JUDGE BENITA Y. PEARSON
)	
STATE OF OHIO,)	
)	<u>MEMORANDUM OF OPINION AND</u>
Respondent.)	<u>ORDER</u>

Pro se Petitioner Eric J. Welly filed a Petition for a Writ of Habeas Corpus¹ pursuant to [28 U.S.C. § 2254 \(ECF No. 1\)](#), alleging three (3) grounds for relief which challenge his conviction and sentence in the Seneca County Court of Common Pleas, [Case No. 14-CR-0193](#). A Seneca County Grand Jury indicted Petitioner on one count of rape of a child less than ten years of age in violation of [Ohio Rev. Code § 2907.02\(A\)\(1\)\(b\), \(B\)](#). [ECF No. 7-1 at PageID #: 74-75](#). Petitioner initially pleaded not guilty. [Id. at PageID #: 76-77](#). Later, Welly, through counsel, filed a plea of not guilty and not guilty by reason of insanity. [Id. at PageID #: 78-79](#). After court-ordered competency and sanity evaluations, the court found Petitioner competent to stand trial. [Id. at PageID #: 82-83](#). The court proceeded with arraignment, and Petitioner restated his plea of not guilty. [Id. at PageID #: 82](#).

¹ Petitioner sued the State of Ohio. He should have sued Alan J. Lazaroff, Warden of the Mansfield Correctional Institution, where Petitioner is currently incarcerated. Warden Lazaroff filed a return of writ in response to Petitioner's petition. [ECF No. 7](#).

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On November 17, 2014, Petitioner changed his plea from not guilty to guilty of the lesser included offense of rape, removing reference to the victim's age. [Id. at ECF No. 84-87](#). The court advised Petitioner of his rights, his potential sentence, and accepted his plea of guilty. [Id. at PageID #: 88-90](#). Petitioner was sentenced to a prison term of 25 years to life. [Id. at PageID #: 89](#). After unsuccessfully seeking relief in state court, Petitioner filed his habeas petition in federal court.

The case was referred to Magistrate Judge Thomas M. Parker for preparation of a report and recommendation pursuant to [28 U.S.C. § 636](#) and [Local Rule 72.2\(b\)\(2\)](#). On November 20, 2018, the magistrate judge issued a Report and Recommendation ([ECF No. 11](#)). In his report, the magistrate judge recommends that the Court deny the habeas petition for the following reasons: (1) Ground One is non-cognizable on habeas review, procedurally defaulted, and lacks merit; and (2) Grounds Two and Three are non-cognizable on habeas review and fail on the merits. [Id.](#)

[Fed. R. Civ. P. 72\(b\)\(2\)](#) provides that objections to a report and recommendation must be filed within 14 days after service. Objections to the Report were due on December 4, 2018.² Neither party has timely filed any such objections. The Court must assume that the parties are satisfied with the magistrate judge's recommendations. Any further review by this Court would

² Under [Fed. R. Civ. P. 6\(d\)](#), three days must be added to the fourteen-day time period because Petitioner was served a copy of the Report by mail. See [Thompson v. Chandler](#), 36 F. App'x 783, 784 (6th Cir. 2002).

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be a duplicative and inefficient use of the Court's limited resources. [Thomas v. Arn, 728 F.2d 813 \(6th Cir. 1984\)](#), [aff'd, 474 U.S. 140 \(1985\)](#); [Howard v. Secretary of Health and Human Services, 932 F.2d 505 \(6th Cir. 1991\)](#); [United States v. Walters, 638 F.2d 947, 949-50 \(6th Cir. 1981\)](#).

Accordingly, the Report and Recommendation of the magistrate judge is hereby adopted. Eric J. Welly's Petition for a Writ of Habeas Corpus is dismissed. [ECF No. 1](#). 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.

December 20, 2018
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge