

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Jason Carter,)	CASE NO. 4:09 CV 2262
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
vs.)	
)	
Bennie Kelly, Warden)	<u>Memorandum of Opinion and Order</u>
)	
Respondent.)	

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Armstrong (Doc. 12) which recommends denial of the Petition for Writ of Habeas Corpus pending before the Court as well as petitioner’s Motion for Abeyance Order. For the following reasons, the Report and Recommendation is ACCEPTED.

Introduction

Petitioner, Jason Carter, commenced this action with the filing of a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The Magistrate Judge issued her Report and Recommendation recommending that the Petition be denied. Petitioner filed Objections to the Report and Recommendation.

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.”

Discussion

Petitioner was found guilty of murder in 2006 by a jury and sentenced to 15 years to life in prison. He filed this Petition, asserting three grounds for relief. Initially, the Magistrate Judge recommended that petitioner’s Motion for Abeyance be denied as petitioner was not requesting a remand to state court for purposes of exhausting an unexhausted claim. Rather, petitioner is attempting to return to state court for re-sentencing on the issue of imposition of post-release control. The Magistrate Judge then determined that petitioner’s three claims were unexhausted and procedurally defaulted.

In submitting his Objections, petitioner appears to ask this Court to dismiss his present Petition (Doc. 13 at 3) and allow him to amend it (*Id.* 5), or enter an order striking it with permission to present new claims (*Id.*). The Court finds no reasonable basis in law presented by petitioner in favor of such relief. Rather, the Court finds the reasons for denial of the Petition asserted by the Magistrate Judge to be fully supported.

For these reasons, and those stated in the Report and Recommendation which is incorporated herein by reference, a writ of habeas corpus is not warranted.

Conclusion

Accordingly, the Report and Recommendation is accepted. The Petition for Writ of

Habeas Corpus is denied. Furthermore, for the reasons stated herein and in the Report and Recommendation, 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 Judge

Dated: 12/21/11