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

ERIC PORTERFIELD, Pro Se,	)	Case No.: 4:10 CV 340
Petitioner	)	JUDGE SOLOMON OLIVER, JR.
V.	)	
KEITH SMITH, WARDEN,	)	
Respondent	)	ORDER

On February 2, 2010, Petitioner Eric Porterfield, *Pro Se* ("Petitioner"), filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1.) Petitioner has alleged ineffective assistance of appellate counsel for failing to raise: "'Dead Bang Winners' in the Error Assignments of 1.) Ineffective Assistance of Counsel, 2.) Manifest Weight of Evidence, 3.) Violation of Due Process, and 4.) Ineffective Assistance of Counsel/Defective Advise [sic]." (*Id.* at 4.) This case was referred to Magistrate Judge Kenneth McHargh for preparation of a report and recommendation. The Magistrate Judge issued his Report and Recommendation ("R&R") on April 7, 2011, recommending that the Petition be denied. (ECF No. 23.) Specifically, the Magistrate Judge concluded that Petitioner's ground for relief had been procedurally defaulted. (R & R at 14-17.) Petitioner failed to show cause as required by the Sixth Circuit in *Maupin v. Smith*, 285 F.2d

135, 138 (6th Cir. 1986). (Id.) Since he had not demonstrated cause, the court did not need to

consider the second part of the requirement put forth by Maupin of prejudice. (Id. at 18.) Without

a showing of cause and prejudice to excuse a procedural default, the court cannot review the merits

of the claim. (Id.) Therefore, Petitioner's claim of ineffective assistance of counsel has been

procedurally defaulted.

Petitioner filed Objections to the R&R on May 11, 2011. (ECF No. 25.) The court finds his

Objections not to be well-taken. The court finds that, after de novo review of the Report and

Recommendation and all other relevant documents, the Magistrate Judge's conclusions are fully

supported by the record and controlling case law. Accordingly, for the reasons stated by the

Magistrate Judge, the court adopts as its own the Magistrate Judge's Report and Recommendation.

(ECF No. 23.)

Consequently, Porterfield's Petition is hereby denied and final judgment is entered in favor

of Respondent. The court further certifies that, pursuant to 28 U.S.C. § 1915(a)(3), 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.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.

CHIEF JUDGE

UNITED STATES DISTRICT COURT

May 26, 2011

Despite the court granting Petitioner an extension of time (ECF No. 22), he has not

filed a Traverse.

-2-