

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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|-----------------------------|---|----------------------------------|
| ROZELL WOODSON, |) | CASE NO. 5:08 CV 2779 |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | JUDGE DONALD C. NUGENT |
| |) | |
| KEITH SMITH, Warden, |) | |
| |) | |
| Respondent. |) | <u>MEMORANDUM OPINION</u> |

On September 23, 2010, Magistrate Judge Benita Pearson issued a Memorandum Opinion and Order in the above captioned matter. (Docket #11.) Magistrate Judge Pearson denied in part and granted in part the Motion to Dismiss, or in the Alternative, to Stay Proceedings filed by Respondent (Docket #9). Finding that the issues raised in Petitioner, Rozell Woodson's Petition for Writ of Habeas Corpus substantially overlapped with a pending appeal filed by Woodson in State court, Magistrate Judge Pearson issued a stay of the Petition for Writ of Habeas Corpus, with the condition that Woodson seek reinstatement on the Federal Court's active docket within thirty (30) days of fully exhausting his State court remedies.¹

¹

The Motion to Dismiss or Stay was filed by Respondent on August 5, 2010. Petitioner did not respond. Petitioner has not communicated with the Court since he initially filed his Petition on November 25, 2008. (Docket #1.)

On March 31, 2011, the Ninth District Court of Appeals issued a Decision and Journal Entry. State v. Woodson, 2001-Ohio-1537. The Ninth District Court of Appeals affirmed Woodson's conviction. The Court held as follows with regard to Woodson's First Assignment of Error:

The trial court exceeded its authority when it attempted to resentence Woodson on aspects of his sentence that were not void, we vacate those parts of the resentencing entry that addressed anything other than postrelease control. Woodson's original concurrent sentences remain valid, as does the portion of the appealed resentencing judgment that addresses postrelease control.

2001-Ohio-1537 at p. 5. The Court of Appeals found review of Woodson's additional Assignments of Error to be barred. Id. at pp. 5-8.

This Court has no indication that Woodson appealed the March 31, 2011 decision of the Ninth District Court of Appeals to the Ohio Supreme Court. Woodson has not filed anything with this Court indicating he intends to reinstate his Petition with this Court.

Conclusion

Woodson was required to reinstate his Petition within 30 days of exhausting his State remedies. It has been over eight months since the Ninth District Court of Appeals issued its decision. Because Woodson has failed to communicate with this Court his intention to reinstate the Petition, as specifically ordered by Magistrate Judge Pearson, the Petition for Writ of Habeas Corpus filed by Rozell Woodson (Docket #1) is hereby DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

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

DATED: December 13, 2011