

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

DONNIS DIXON,	:	
	:	
Petitioner,	:	CASE NO. 5:08-CV-2883
	:	
vs.	:	OPINION & ORDER
	:	[Resolving Doc. Nos. 1 & 14]
KEITH SMITH,	:	
Warden,	:	
	:	
Respondent.	:	

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Donnis Dixon petitions for a writ of habeas corpus under [28 U.S.C § 2254](#). [[Doc 1](#).]
Petitioner Dixon seeks relief from the nineteen-year sentence that an Ohio state court imposed following his convictions for felony assault, possessing weapons while under disability, improperly handling firearms in a vehicle, and assault. [[Id.](#)]

Petitioner Dixon raises three grounds for relief: (1) the evidence at trial was insufficient to secure Petitioner’s felony assault and assault convictions; (2) ineffective assistance of appellate counsel because appellate counsel did not raise an assignment of error that trial counsel was constitutionally ineffective; and (3) ineffective assistance of appellate counsel because appellate counsel refused to turn over the Petitioner’s transcripts from his direct appeal. [[Id. at 7-9](#).]

This matter was automatically referred to Magistrate Judge James McHargh pursuant to Local Rule 72.2. On July 1, 2010, Magistrate Judge McHargh issued a Report and Recommendation that recommended this Court deny Dixon’s petition. [[Doc. 14](#).]

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The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which the parties have made an objection. [28 U.S.C. § 636\(b\)\(1\)\(C\)](#). Parties must file any objections to a Report and Recommendation within fourteen days of service. *Id.*; [Fed. R. Civ. P. 72\(b\)\(2\)](#). Failure to object within this time waives a party's right to appeal the district court's judgment. [Thomas v. Arn, 474 U.S. 140, 145 \(1985\)](#); [United States v. Walters, 638 F.2d 947, 949-50 \(6th Cir. 1981\)](#). Absent objection, a district court may adopt the magistrate judge's report without review. *See Thomas, 474 U.S. at 149.*

In this case, neither party has objected to the Magistrate Judge's recommendation. Moreover, having conducted its own review of the record and the parties' briefs in this case, the Court agrees with the conclusions of Magistrate Judge McHargh.

Accordingly, the Court **ADOPTS** in whole Magistrate Judge McHargh's Report and Recommendation and incorporates it fully herein by reference, and **DENIES** Dixon's habeas petition. Further, 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 no basis exists upon which to issue a certificate of appealability. [28 U.S.C. § 2253\(c\)](#); [Fed. R. App. P. 22\(b\)](#).

IT IS SO ORDERED.

Dated: August 20, 2010

s/ James S. Gwin

JAMES S. GWIN
UNITED STATES DISTRICT JUDGE