

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

Richard Alan Culp,)	
)	CASE NO. 5:17 CV 852
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
Vs.)	
)	
)	
Alan J. Lazaroff, Warden)	<u>Memorandum of Opinion and Order</u>
)	
Respondent.)	

Introduction

This matter is before the Court upon the Report and Recommendation of Magistrate Judge William H. Baughman, Jr. (Doc. 30) which recommends denial and dismissal of the Petition for Writ of Habeas Corpus pending before the Court. Petitioner has not filed objections to the recommendation. For the following reasons, the Report and Recommendation is ACCEPTED.

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. "When no objections have been filed this Court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See* Advisory Committee Notes 1983 Addition to Federal Rule of Civil Procedure 72.

Discussion

Petitioner is incarcerated following his convictions of five counts of rape and one count of kidnapping with repeat offender and sexually violent specifications. The Petition for Writ of Habeas Corpus asserts six grounds for relief. The Magistrate Judge recommended that Grounds One, Two, and Four be denied on the merits; Ground Six be dismissed as procedurally defaulted; and Grounds Three and Five be dismissed as non-cognizable. As petitioner did not file objections, the Court has reviewed for clear error. Having found no such error, the recommendation is accepted in full.

Ground One contends that petitioner's due process rights were violated when the trial court admitted photographs of his Nazi paraphernalia. Ground Two asserts that there was insufficient evidence to support the convictions for rape and kidnapping. Ground Four alleges that the finding that petitioner is a sexually violent offender is not supported by sufficient evidence. The Magistrate Judge concluded that the Ohio courts' findings addressing these claims were not contrary to, or involving an unreasonable application of, the clearly established federal law.

In Count Six, petitioner asserted ineffective assistance of appellate counsel on direct review. The Magistrate Judge found the claim to be procedurally defaulted because petitioner did not raise the claim to the Ohio courts. Nor did petitioner excuse the default.

Count Three was found to be non-cognizable given that it was a manifest weight of the

evidence claim which is a state law claim. Count Five argued that consecutive sentences for allied offenses violated double jeopardy and was resolved by Ohio law. Consequently it was non-cognizable as well.

As the resolution of these claims was not clearly erroneous, the Report and Recommendation is accepted.

Conclusion

For the reasons set forth herein and for the reasons set forth in the Magistrate Judge's Report and Recommendation, which is incorporated herein, the Petition for Writ of Habeas Corpus is denied and dismissed. Furthermore, 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
Chief Judge

Dated: 9/10/20