

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Jerome Henderson,

Petitioner,

Case No. 1:94-cv-00106

- vs -

Judge Michael R. Barrett
Magistrate Judge Michael R. Merz

Terry Collins, Warden,

Respondent.

ORDER

This matter is before the Court on the Magistrate Judge's March 21, 2018 Deficiency Order and Report and Recommendation ("R&R") (Doc. 258) which ordered that Petitioner pay the appellate filing fee and recommended that Petitioner's Motion for a Certificate of Appealability¹ (Doc. 257) be denied. Petitioner filed Objections to the March 21, 2018 Deficiency Order and R&R. (Docs. 260, 261).² The matter is also before the Court on Petitioner's Objections (Doc. 264) to the Magistrate Judge's April 10, 2018 Notation Order (Doc. 263) denying Petitioner's Motion for Leave to Appeal *in forma pauperis* (Doc. 262) as moot.

When objections to an order of a magistrate judge are received on a non-dispositive matter, the district judge must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law. FED. R. CIV. P. 72(a). When objections to an order of a magistrate judge are received on a dispositive matter, the "district judge must determine *de novo* any part of the magistrate judge's

¹ Regarding the undersigned's February 27, 2018 Order (Doc. 255) adopting the Magistrate Judge's April 24, 2017 R&R (Doc. 246).

² These documents are identical.

disposition that has been properly objected to.” FED. R. CIV. P. 72(b)(3). “The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” *Id.*

Petitioner’s arguments and Objections center on the fact that the undersigned did not, in the February 27, 2018 Order (Doc. 255), expressly state that Petitioner is denied a certificate of appealability and Petitioner shall not be granted leave to appeal *in forma pauperis*. (Docs. 257, 260, 261, 264). He asserts that a certificate of appealability is warranted, as reasonable jurists could debate the Magistrate Judge’s three primary conclusions which the undersigned adopted in the February 27, 2018 Order. *Compare* (Doc. 255), *with* (Doc. 257 at PageID 1247, 1257, 1261). However, in the February 27, 2018 Order, the undersigned adopted the Magistrate Judge’s April 24, 2017 R&R in full, including the recommendation that any appeal would not be taken in good faith. *Compare* (Doc. 255), *with* (Doc. 246).

After consideration of Petitioner’s Objections regarding leave to appeal *in forma pauperis* and *de novo* review of his Objections regarding a certificate of appealability—both regarding the February 27, 2018 Order—the Court concludes that the Magistrate Judge’s March 21, 2018 Deficiency Order ordering Petitioner to pay the appellate filing fee (Doc. 258) and April 10, 2018 Notation Order (Doc. 263) denying Petitioner’s Motion for Leave to Appeal *in forma pauperis* as moot are not clearly erroneous or contrary to law and that the Magistrate Judge’s March 21, 2018 R&R recommending (Doc. 258) that Petitioner’s Motion for a Certification of Appealability be denied is correct.

In light of the above, the Court **ORDERS** that:

1. Petitioner’s Objections (Docs. 260, 261, 264) are **OVERRULED**, the

March 21, 2018 Deficiency Order and April 20, 2018 Notation Order (Docs. 258, 263) **REMAIN** the Orders of the Court and the March 21, 2018 R&R (Doc. 258) is **ADOPTED** in full.

2. The Petitioner's Motion for a Certificate of Appealability (Doc. 257)—regarding the February 27, 2018 Order (Doc. 255)—is **DENIED**, because any appeal would not be taken in good faith.
3. Petitioner shall not be granted leave to appeal—the February 27, 2018 Order (Doc. 255)— *in forma pauperis*, as any appeal would not be taken in good faith and would be objectively frivolous.

IT IS SO ORDERED.

____s/ Michael R. Barrett_____
HON. MICHAEL R BARRETT
UNITED STATES DISTRICT JUDGE