

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

Angelo Smith,

Petitioner,

v.

Case No. 1:07cv878

Timothy Brunsman, Warden,

Judge Michael R. Barrett

Respondent.

ORDER

This matter is before the Court on the Report and Recommendation filed by the Magistrate Judge on December 16, 2008 (Doc. 16).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). Despite receiving extensions to file objections (See Docs. 19 and 22), no objections to the Magistrate Judge's Report and Recommendation have been filed.

Having reviewed this matter de novo pursuant to 28 U.S.C. 636, this Court finds the Magistrate Judge's Report and Recommendation to be correct.

Accordingly, it is **ORDERED** that the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED**. Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is **DENIED** with prejudice consistent with the opinion of the Magistrate Judge; and the Motion to Amend Petitioner (Doc. 14) is **DENIED**. This matter is closed.

A certificate of appealability shall not issue with respect to petitioner's claims for relief under the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). With respect to any application by petitioner to proceed on appeal in

forma pauperis, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation would not be taken in “good faith,” and therefore **DENIES** petitioner leave to appeal in *forma pauperis* upon a showing of financial necessity. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Michael R. Barrett
Michael R. Barrett, Judge
United States District Court