

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ERNEST HOLLINGSWORTH,	:	
	:	NO. 1:08-CV-00745
Petitioner,	:	
	:	
v.	:	OPINION AND ORDER
	:	
	:	
DEB TIMMERMAN-COOPER,	:	
	:	
Respondents.	:	

In its June 24, 2011 Order the Court adopted and affirmed the Magistrate Judge’s Supplemental Report and Recommendation (doc. 46), and thus held this matter in abeyance pending a response from the Ohio Supreme Court pertaining to the following certified question:

Do Ohio R. Crim. P. 11(B)(2) and Ohio R. Evid. 410(A)(2), which prohibit the use of a defendant’s no contest plea against the defendant “in any subsequent civil ... proceeding” apply to prohibit the use of such a plea in a subsequent civil proceeding which is a collateral attack on the criminal judgment which results from the no contest plea, such as a petition for post-conviction relief under Ohio Revised Code § 2953.21, or a federal habeas corpus action under 28 U.S.C. § 2254?

By its September 4, 2012 Judgment Entry, the Ohio Supreme Court has answered the question in the negative (doc. 51). As such, the Magistrate Judge was correct in his initial assessment that by pleading no contest, Petitioner had forfeited his claim of ineffective assistance of trial counsel by pleading no contest, and that his no contest plea could indeed be used against him in a

subsequent civil habeas proceeding (doc. 43). The Court concludes, therefore, that there is no basis for Petitioner's Petition for Writ of Habeas Corpus (doc. 1). The Court ADOPTS and AFFIRMS the Magistrate Judge's Reports and Recommendations in all respects (docs. 40, 43), and DISMISSES the Petition (doc. 1) with prejudice. Because reasonable jurists would not disagree with this conclusion, the Petitioner should be DENIED leave to appeal in forma pauperis and any requested certificate of appealability.

SO ORDERED.

Dated: October 4, 2012

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge