

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

DANTE PERSON,	:	Case No. 1:10-cv-35
	:	
Petitioner,	:	Judge Timothy S. Black
	:	Magistrate Judge Karen L. Litkovitz
vs.	:	
	:	
WARDEN, Warren Correctional Institution,	:	
	:	
Respondent.	:	

**DECISION AND ENTRY: (1) ADOPTING THE REPORT AND  
RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE  
(Doc. 10); (2) GRANTING IN PART AND DENYING IN PART THE PETITION;  
AND (3) TERMINATING THIS CASE FROM THE DOCKET**

This civil case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Karen L. Litkovitz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court, and, on March 30, 2011, submitted a Report and Recommendations. (Doc. 10). On April 1, 2011, the Respondent filed Objections to the Report and Recommendations (Doc. 11) and the Petitioner filed a Response (Doc. 12).

As required by 29 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this case. Upon consideration of the foregoing, the Court does determine that such Report and Recommendations should be and is hereby **ADOPTED** in its

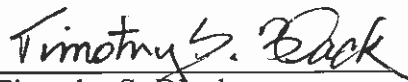
entirety; and the Respondent's Objections to the Report and Recommendations are overruled.

Accordingly:

1. The petition for writ of habeas corpus is **DISMISSED WITH PREJUDICE**, except to the extent that relief is **GRANTED** on the claim in Ground One that Petitioner was multiply punished for the same offense in violation of the Constitution's Double Jeopardy Clause when the trial court failed to merge his two felonious assault convictions for sentencing purposes;
2. The writ of habeas corpus is **GRANTED** to remedy the constitutional violation unless, within 90 days of the date of this Order, Ohio merges the two felonious assault charges resulting in guilty verdicts (Counts 3-4) into one conviction as "allied offenses of similar import" under Ohio Rev. Code. § 2941.25 for sentencing purposes and resentsences Petitioner on that one conviction in accordance with the Report and Recommendations;
3. A certificate of appealability will not issue with respect to the claims alleged in Ground Three asserting a violation of the Sixth Amendment's Confrontation Clause or due process;
4. With respect to any application by Petitioner to proceed on appeal *in forma pauperis*, the Court certifies that, pursuant to 28 U.S.C. § 1915(a)(3), an appeal of this Order would not be taken in good faith; and
5. This case is **TERMINATED** on the docket of this Court.

**IT IS SO ORDERED.**

Date: 12/19/11

  
Timothy S. Black  
United States District Judge