

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

MARK H. KAEDING,

Petitioner,

-vs-

WARDEN, Lebanon Correctional
Institution,

Respondent.

:

Case No. 1:11-cv-121

:

District Judge Michael R. Barrett
Magistrate Judge Michael R. Merz

:

**REPORT AND RECOMMENDATIONS ON MOTION TO APPEAL *IN*
*FORMA PAUPERIS***

This habeas corpus case is before the Court on Petitioner's Motion for Leave to Appeal *in forma pauperis* (ECF No. 80).

On September 19, 2016, District Judge Barrett adopted the Magistrate Judge's Report and Recommendations on the Merits (ECF No. 45). Therein, the Magistrate Judge recommended that the District Court "certify to the Sixth Circuit that any appeal would not be taken in objective good faith." Although no separate mention is made of this point in the Opinion and Order adopting the Report, a District Judge reviewing a report and recommendations is not required to discuss each point in the report, but only those to which specific objection is made. Thus Judge Barrett's adoption of the Report and Recommendations on the Merits renders the instant Motion moot. In addition, Petitioner has made no showing that an appeal would be taken in objective good faith.

It is therefore respectfully recommended that the Motion be DENIED. Petitioner can

apply directly to the Sixth Circuit for leave to appeal *in forma pauperis* at the same time as he applies for a certificate of appealability.

October 12, 2016.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).