

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

MARIO CHANDLER,
Petitioner,

Case No. 1:12-cv-078

vs.

Dlott, J.
Bowman, M.J.

WARDEN, LEBANON
CORRECTIONAL INSTITUTION,
Respondent.

**ORDER AND REPORT
AND RECOMMENDATION**

Petitioner, an inmate in state custody at the Lebanon Correctional Institution in Lebanon, Ohio, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1). This matter is before the Court on petitioner's motion to hold his petition in abeyance pending the exhaustion of his state court remedies. (Doc. 9).

On July 23, 2012, through counsel, petitioner requested that the Court hold his petition in abeyance pending the outcome of his motion for a new trial, which was filed in Hamilton County Court of Common Pleas on July 10, 2012. (Doc. 9, p. 2). On January 9, 2013, the undersigned issued a Show Cause Order directing petitioner to show cause why his motion to hold his petition in abeyance should not be denied as moot in light of the Hamilton County Court of Common Pleas' December 10, 2012 denial of his motion for a new trial. (Doc. 10).

Counsel for petitioner has filed a response to the Show Cause Order. (Doc. 11). Therein, petitioner indicates that he has elected not to pursue the issues presented in the motion for a new trial in this habeas corpus proceeding. *Id.* Petitioner further states that his motion to hold his petition in abeyance is now moot and requests an extension of the time period for filing a response to the return of writ. *Id.*

Accordingly, it appears that petitioner's motion to hold his petition in abeyance (Doc. 9)

is now moot.

IT IS THEREFORE RECOMMENDED THAT:

Petitioner's motion to hold his habeas petition in abeyance pending exhaustion (Doc. 9) be **DENIED** as moot.

IT IS THEREFORE ORDERED THAT:

Petitioner shall have until February 7, 2013 to file a response to the return of writ.

s/ Stephanie K. Bowman
Stephanie K. Bowman
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. 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 Recommendation is based in whole or in part upon matters occurring on the 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 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).