

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

CHARLES DILLINGHAM,

Petitioner,

: Case No. 1:13-cv-468

- vs -

Chief Judge Susan J. Dlott
Magistrate Judge Michael R. Merz

WARDEN, CHILLICOTHE CORRECTIONAL
INSTITUTION,

:

Respondent.

**DECISION AND ORDER DENYING MOTION FOR
RECONSIDERATION**

This habeas corpus case is before the Court on Petitioner's Motion for Reconsideration (Doc. No. 46) of the Magistrate Judge's Decision and Order Denying Dillingham's Renewed Motion for Evidentiary Hearing (Doc. No. 44). Mr. Dillingham indicates some confusion as to proper process.

A motion for reconsideration is directed to the judge who made the decision on which reconsideration is sought. In this case, that would be the magistrate judge because the motion for evidentiary hearing was decided by the magistrate judge and it is a nondispositive motion which is properly decided in the first instance by a magistrate judge under 28 U.S.C. § 636(b). If Dillingham believes the Magistrate Judge's decision was wrong to deny an evidentiary hearing at this stage of the proceedings, he has two possible ways to proceed. First, if he believes he can persuade the Magistrate Judge that he was wrong, he can file a motion for reconsideration. Second, if he wants to persuade the District Judge that the Magistrate Judge was wrong, he can

file objections. Since Dillingham was confused about the proper process, his time to file objections to the Decision and Order denying an evidentiary hearing is EXTENDED to and including October 10, 2014.

As the current Motion notes, there are pending Reports and Recommendations before the District Judge on the merits (Doc. Nos. 33, 37, & 41.) If Chief Judge Dlott rejects those Reports and concludes that the state court decision was an unreasonable application of Supreme Court precedent, Dillingham could at that time renew his motion for an evidentiary hearing because *Cullen v. Pinholster*, 563 U.S. ___, 131 S. Ct. 1388 (2011), would no longer bar a hearing.

Because Dillingham has not shown a manifest error of law in denying his motion for evidentiary hearing at this stage of the proceedings, his Motion for Reconsideration is DENIED. September 29, 2014.

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