

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

CHARLES DILINGHAM,

Petitioner,

: Case No. 1:13-cv-468

- vs -

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

WARDEN,

Chillicothe Correctional Institution,

:

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATIONS ON
MOTION FOR RELIEF FROM JUDGMENT**

This habeas corpus case, brought under 28 U.S.C. § 2254, is before the Court on Petitioner's Objections (ECF No. 59) to the Magistrate Judge's Report and Recommendations (ECF No. 58) which recommended denying Petitioner's Motion for Relief from Judgment (ECF No. 57). As required by Fed. R. Civ. P. 72(b), the Court has reviewed de novo the Objections Petitioner has raised, but finds that they should be overruled for the reasons set forth in this Order.

Dillingham equates the doctrine of fraud on the court with the court somehow making an error of law. Then he claims such a "fraud" on the court makes all subsequent orders void because a court loses jurisdiction of the subject matter when it commits a fraud on itself (Objections, ECF No. 59, PageID 1191-92). That simply is not the law. Dillingham cites no case from any court in which it has been held that a judge can defraud the court on which she or

he sits by committing legal error.

Dillingham claims he was convicted “in large part because of his race,” but the time for that argument, if it is supported by any evidence, was at trial or at least before this Court dismissed the habeas petition, not now on a motion for relief from judgment.

Petitioner complains that he was denied an evidentiary hearing (Objections, ECF No. 59, PageID 1195). An evidentiary hearing was denied before final judgment (ECF No. 44). Dillingham had an opportunity to present that claim to the Sixth Circuit in his request for a certificate of appealability from that court, but did not do so.

For the foregoing reasons, the Objections are **OVERRULED** and the Magistrate Judge’s Report and Recommendations are **ADOPTED**. The Motion for Relief from Judgment is **DENIED**. Because reasonable jurists would not disagree with this conclusion, Petitioner is denied a certificate of appealability and the Court certifies to the Sixth Circuit that any appeal would be objectively frivolous and therefore should not be permitted to proceed *in forma pauperis*.

June 30, 2017.

____s/ Susan J. Dlott_____
Susan J. Dlott
United States District Judge