

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

STANLEY K. IVEY,	:	Case No. 1:13-cv-914
	:	
Petitioner,	:	Judge Timothy S. Black
	:	Magistrate Judge Karen L. Litkovitz
vs.	:	
	:	
WARDEN, HOCKING	:	
CORRECTIONAL FACILITY,	:	
	:	
Respondent.	:	

**DECISION AND ENTRY ADOPTING THE REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE
(Doc. 14) AND REFERRING RESPONDENT’S RENEWED MOTION TO
DISMISS (Doc. 18) TO THE UNITED STATES MAGISTRATE JUDGE
FOR REPORT AND RECOMMENDATION**

This 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 November 12, 2014, submitted a Report and Recommendation. (Doc. 14).

The Magistrate Judge recommended that Respondent’s motion to dismiss the “mixed” petition without prejudice on exhaustion grounds (Doc. 13) be denied subject to reconsideration in the event that Petitioner informs the Court in writing within thirty days of the date of filing of the Report and Recommendation that the ineffective-assistance-of-counsel claim alleged in Ground Three is based on evidence outside the record and yet

does not withdraw that claim in order to proceed to judgment on the remaining grounds for relief alleged in the petition. Neither party filed objections.

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 matter. Upon consideration of the foregoing, the Court does determine that such Report and Recommendation should be and is hereby **ADOPTED** in its entirety.

This decision does *not* constitute a ruling on Respondent's renewed motion to dismiss (Doc. 18), filed in response to Petitioner's motion for an evidentiary hearing and for "discovery. . . to obtain critical medical records" that would support his ineffective-assistance-of-counsel claim (Doc. 18). The Court construes Respondent's renewed motion to dismiss (Doc. 18) as a motion for reconsideration in accordance with the Magistrate Judge's Report and Recommendation adopted herein and refers the motion to the Magistrate Judge for a Report and Recommendation on the exhaustion issue.

Accordingly, for the foregoing reasons:

1. Respondent's original motion to dismiss the "mixed" petition without prejudice on exhaustion grounds (Doc. 13) is **DENIED**; and
2. Respondent's renewed motion to dismiss (Doc. 18), which is construed as a motion for reconsideration in accordance with the Magistrate Judge's Report and Recommendation adopted herein, is **REFERRED** to the Magistrate Judge for Report and Recommendation in light of the Petitioner's motion for an evidentiary hearing and expert medical testimony (Doc. 16).

IT IS SO ORDERED.

Date: 2/3/15

s/ Timothy S. Black
Timothy S. Black
United States District Judge