

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

David Keith Gerald,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:15cv493
vs.	:	
	:	Judge Susan J. Dlott
Warden, Ross Correctional Institution,	:	
	:	
Respondent(s).	:	

ORDER

The Court has reviewed the Report and Recommendation of United States Magistrate Judge Stephanie K. Bowman filed on February 27, 2017 (Doc. 20), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired March 13, 2017, hereby ADOPTS said Report and Recommendation.

Accordingly, petitioner’s *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 (Doc. 1) is DENIED with prejudice.

A certificate of appealability will issue for the following claims alleged in the petition, which are addressed on the merits herein:

- a. the claim in Ground Five challenging the admission of petitioner’s videotaped police interview into evidence on the ground that it is contained impermissible hearsay statements by petitioner’s co-defendants in violation of the Confrontation Clause;
- b. the claim in Ground Six that petitioner’s trial counsel was ineffective for failing to file a motion to suppress statements made by petitioner in his police interview after he invoked his right to counsel.

A certificate of appealability will not issue with respect to petitioner’s remaining grounds

for relief that have been considered on the merits herein because petitioner has not stated a “viable claim of the denial of a constitutional right,” nor are the issues presented in those remaining grounds “adequate to deserve encouragement to proceed further.” *See Slack v. McDaniel*, 529 U.S. 473, 475 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)); *see also* 28 U.S.C. §2253(c); Fed. R. App. P. 22(b). In addition, to the extent that petitioner has raised claims in the petition which this Court has concluded are waived and thus procedurally barred from review in the petition, a certificate of appealability will not issue because, under the first of the applicable two-part standard enunciated in *Slack*, 529 U.S. at 484-85, “jurists of reason” will not find it debatable whether the Court is correct in its procedural rulings.

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. §1915(a) that an appeal of any Order adopting the Report and Recommendation will be taken in “good faith,” and therefore GRANTS petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 177 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Judge Susan J. Dlott
United States District Court