

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSCOE T. CAMPBELL,	:	Case No. 1:16-cv-411
	:	
Petitioner,	:	Judge Timothy S. Black
	:	Magistrate Judge Michael R. Merz
vs.	:	
	:	
WARDEN, LEBANON	:	
CORRECTIONAL INSTITUTION,	:	
	:	
Respondent.	:	

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATIONS
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 27)**

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 Michael R. Merz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on June 7, 2017, submitted a Report and Recommendations. (Doc. 20). This Court entered an Order adopting the Report and Recommendations and dismissing Petitioner's writ of habeas corpus with prejudice on October 5, 2017. (Doc. 24). Petitioner had not filed objections by the date of the Court's Order.

The day after the Court's Order dismissing the case, Plaintiff's objections to the initial Report and Recommendations were docketed. (Doc. 26). The October 6, 2017 date of docketing was well beyond Petitioner's deadline to file objections. However, the objections contained a certificate of service indicating that the objections were placed in

the outgoing mail system of the Lebanon Correctional Institution on September 25, 2017, which was Petitioner's deadline for objecting to the Report and Recommendations. (*Id.* at 8). Deposit of an item in the prison mail box counts as filing for an incarcerated person. *Houston v. Lack*, 487 U.S. 266 (1988); *Cook v. Stegall*, 295 F.3d 517, 521 (6th Cir. 2002). Petitioner is therefore entitled to have his objections considered on the merits. However, because the objections were received and docketed after judgment had been entered, the Court is required to treat the objections as a motion to amend the judgment under Fed. R. Civ. P. 59(e).

Petitioner's construed motion to amend the judgment was accordingly reviewed by the Magistrate Judge pursuant to reference. The Magistrate Judge filed a Report and Recommendations on October 10, 2017. (Doc. 27). No objections to this second Report and Recommendations were filed.

As required by 28 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 Recommendations should be and is hereby adopted in its entirety. Accordingly, **IT IS ORDERED** that:

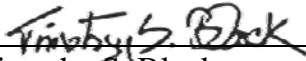
- 1) Petitioner's objections to the June 7, 2017 Report and Recommendations (Doc. 26), construed by this Court as a motion to amend the judgment under Rule 59(e), are **DENIED**.
- 2) A certificate of appealability shall not issue with respect to any of the grounds for relief alleged in the petition because petitioner has not stated a "viable claim of the denial of a constitutional right," nor are the issues presented "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);

- 3) The Court certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal of this Order would not be taken in good faith and therefore Petitioner is denied leave to appeal *in forma pauperis*.

IT IS SO ORDERED.

Date: 1/25/18



Timothy S. Black
United States District Judge