

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

David Michael Patrick, :
: :
Petitioner(s), : Case Number: 1:16cv1029
: :
vs. : Judge Susan J. Dlott
: :
Warden, Lebanon Correctional Institution, :
: :
Respondent(s). : :
:

ORDER

The Court has reviewed the Report and Recommendation of United States Magistrate Judge Karen L. Litkovitz filed on August 8, 2017 (Doc. 10), 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 August 22, 2017, hereby ADOPTS said Report and Recommendation.

Accordingly, respondent's motion to dismiss (Doc. 5) is GRANTED and petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 (Doc. 1) is DISMISSED with prejudice to refiling after petitioner exhausts his state court remedies.

A certificate of appealability will not issue under the standard set forth in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), because "jurists of reason" will not find it debatable whether the Court is correct in its procedural ruling that petitioner has failed to exhaust state court remedies and that his case is DISMISSED without prejudice pending his exhaustion of such remedies.

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)(3) that an appeal of any Order adopting the

Report and Recommendation will not be taken in “good faith,” therefore DENYING petitioner leave to appeal *in forma pauperis*. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

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