

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

Mario Trollinger, :
Petitioner(s), :
vs. : Case Number: 1:17cv122
John Coleman, : Judge Susan J. Dlott
Respondent(s). :
:

ORDER

The Court has reviewed the Report and Recommendation of United States Magistrate Judge Stephanie K. Bowman filed on January 26, 2018 (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 February 9, 2018, hereby ADOPTS said Report and Recommendation.

Accordingly, respondent's motion to transfer the petition (Doc. 9) is GRANTED as follows: Ground Three, and any claims in Grounds One and Two challenging the 2011 judgment of conviction and sentence, will be transferred pursuant to 28 U.S.C. §1631 to the United States Court of Appeals for the Sixth Circuit for review and determination whether the District Court may consider the successive claims for relief; and any non-successive claims alleged in Grounds One and Two challenging the trial court's 2013 denial of petitioner's motion for new trial without an evidentiary hearing and the Ohio Supreme Court's August 2016 denial of petitioner's motion for delayed appeal will be dismissed with prejudice because they do not constitute cognizable grounds for federal habeas relief.

A certificate of appealability will not issue with respect to the non-successive claims

alleged in Grounds One and Two of the petition, which were addressed on the merits herein, because petitioner has not stated a “viable claim of the denial of a constitutional right” or presented issues that are “adequate to deserve encouragement to proceed further.” *See Slack v. McDonnell*, 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).

With respect to any application by petitioner to proceed on appeal *in forma paupers*, 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 petitioner is DENIED leave to appeal *in forma pauperis* upon a showing of financial necessity. *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. Lott
United States District Court