

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

Mark Smith,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:18cv335
vs.	:	
	:	Judge Susan J. Dlott
Warden, Pickaway Correctional Institution,	:	
	:	
Respondent(s).	:	

ORDER

This matter 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 and filed with this Court on July 2, 2019 a Report and Recommendation (Doc. 11). Subsequently, the petitioner filed objections to such Report and Recommendation (Doc. 16) and the respondent filed a response to the objections (Doc. 17).

This case was originally assigned to Judge Barrett and the Court ADOPTED the Report and Recommendation and terminated the case on July 18, 2019 (Doc. 12). Objections to the Report and Recommendation were due on July 16, 2019 but the petitioner did not file any objections by that date. However, on July 19, 2019, the petitioner filed a motion for an extension of time to file objections to the report and recommendation. Judge Barrett granted the motion and petitioner had until October 15, 2019 to file his objections.

The case was then reassigned to Judge McFarland on January 3, 2020 who then reassigned the case for further proceedings and Judge Dlott was assigned the case on March 2,

2019.


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 Recommendation should be adopted.

Accordingly, petitioner's 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 not issue with respect to the claim alleged in the petition, which was addressed on the merits. Since petitioner has not stated a "viable claim of the denial of a constitutional right," nor are the issues presented "adequately 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).

With respect to an 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, 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.



Judge Susan J. Dlott
United States District Court