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

DAVID BRADEN,

Petitioner,

v.

MARGARET BAGLEY, Warden,

Respondent.

Case No. 2:04-cv-842
JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Terence P. Kemp

OPINION AND ORDER

Petitioner, a prisoner sentenced to death by the State of Ohio, has pending before this Court a habeas corpus action pursuant to 28 U.S.C. § 2254. This matter is before the Court on Respondent's Motion to Dismiss Lethal Injection Claims (ECF No. 85), Petitioner's Response (ECF No. 90), and Respondent's Reply (ECF No. 92).

On July 5, 2012, this Court issued an *Opinion and Order* granting Petitioner leave to amend his Petition to add grounds fourteen and fifteen. Those grounds raise Eighth and Fourteenth Amendment challenges, respectively, to Ohio's execution policy, procedures, and practices. Pursuant to the Court's *Opinion and Order*, Petitioner filed his Amended Petition on August 3, 2012 (ECF No. 81) and Respondent filed an Amended Return of Writ on October 2, 2012 (ECF No. 86).

On October 2, 2012, Respondent also filed a Fed. R. Civ. P. 12(b)(6) Motion to Dismiss Petitioner's claims. (ECF No. 85.) Respondent raises two arguments in support of the motion to dismiss. First, Respondent asserts that Petitioner's claims are not cognizable in habeas corpus. Second, Respondent asserts that even assuming Petitioner's claims sound in habeas corpus, they are nonetheless time-barred under 28 U.S.C. § 2244(d).

Petitioner argues in response that "[t]he Court earlier in this litigation rejected both of those arguments." (ECF No. 90, at PAGEID #: 5101.) Petitioner then offers reasons why Respondent's arguments are not supported by the facts or the law. The Court need not address those reasons because Petitioner is correct in his first assertion—this Court has already considered and rejected Respondent's arguments.

In its July 5, 2012 *Opinion and Order* granting Petitioner leave to add grounds fourteen and fifteen, this Court expressly determined that Petitioner's claims were cognizable in habeas corpus and were not barred by the statute of limitations set forth in 28 U.S.C. § 2244(d). Nothing about the various arguments raised by Petitioner in an effort to counter Respondent's motion to dismiss persuades this Court that it is necessary to revisit issues it has already expressly resolved. The Court notes as Petitioner does that multiple District Judges within the Southern District of Ohio and Northern District of Ohio alike have consistently ruled that such Eighth Amendment and Fourteenth Amendment claims sound in habeas corpus and are not time-barred. *See, e.g., Sheppard v. Warden*, Case No. 1:12-cv-198, ECF No. 35 (Frost, J.); *Robb v. Ishee*, Case No. 2:02-cv-535, ECF No. 145 (Marbley, J.) ; *Phillips v. Warden*, 2:13-cv-791, ECF No. 15 (Lioi, J.).

For the foregoing reasons, Respondent's Motion to Dismiss (ECF No. 85) is **DENIED**.

IT IS SO ORDERED.

8-19-2013

EDMUND A. SARGUS, JR.
United States District Judge