

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

RODNEY CARSON,  
  
Petitioner,

CASE NO. 2:07-cv-00375  
JUDGE SARGUS  
MAGISTRATE JUDGE ABEL

v.

STUART HUDSON, Warden,  
  
Respondent.

OPINION AND ORDER

This matter is before the Court on petitioner's motion for reconsideration of the denial of his request for relief from judgment. For the reasons that follow, petitioner's motion for reconsideration, Doc. No. 54, is **GRANTED**. Final judgment dismissing the instant habeas corpus petition without consideration of petitioner's objections, Doc. No. 50, hereby is **VACATED**; however, petitioner's objections are **OVERRULED**. The *Report and Recommendation* **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

On February 25, 2009, final judgment was entered dismissing the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254. Despite being granted an extension of time to file objections to the Magistrate Judge's recommendation of dismissal, petitioner failed to file any objections. On March 23, 2009, he filed a motion for relief from judgment, alleging that he had timely deposited his objections to the Magistrate Judge's *Report and Recommendation* with prison officials for mailing on

February 13, 2009, and through no fault of his own, his objections were never filed. In support of this allegation, petitioner attached a purported withdrawal slip for 51 cents postage withdrawn from his prison account on February 18, 2009, for legal mail. Additionally, he attached a certification of legal mail sent by him from the prison indicating only that he had placed his objections with prison officials for mailing on March 13, 2009, approximately one month after they were due. *See Exhibits to Motion for Relief from Judgment*, Doc. No. 52. Therefore, on March 27, 2009, this Court denied petitioner's motion for relief from judgment. Doc. No. 53. Petitioner now requests reconsideration of that order. He claims that the prior exhibits in support of his motion contained a clerical error. He has attached a new certification of his legal mail now indicating that the prior certification was incorrect, and that he actually placed his objections with prison officials for mailing on February 13, 2009, and that they were mailed on February 18, 2009, although the docket reflects that such objections have never been received by this Court. *See Motion for Reconsideration, Exhibits*, Doc. No. 54.

Although it remains true that the Court did not receive any objections to the Report and Recommendation from plaintiff until March 23, 2009 (doc. 52) and there are now contradictory affidavits from a prison employee regarding when Carson first submitted his objections to the prison mail system, petitioner's motion for reconsideration nonetheless is **GRANTED**. Final judgment dismissing the instant habeas corpus petition without consideration of petitioner's objections, Doc. No. 50, is **VACATED**. However, upon consideration of petitioner's objections, this action again is

hereby **DISMISSED**.

Petitioner objects to all of the Magistrate Judge's recommendations. *See Objections, Exhibit 1 to Motion for Relief from Judgment, Doc. No. 52.* He again raises all of the same arguments he previously presented. In particular, petitioner again argues at length that the evidence was constitutionally insufficient to sustain his convictions, the prosecutor improperly failed to disclose exculpatory evidence, that he is actually innocent of the charges, and the Magistrate Judge improperly recommended dismissal of his claims as procedurally defaulted. As the Report and Recommendation discusses in some detail at pages 9-18, the record demonstrates that the constitutional requirement that, viewed in the light most favorable to the prosecution, there be sufficient evidence to justify a reasonable trier of fact to find guilt beyond a reasonable doubt. *Jackson v. Virginia, supra*, 443 U.S. 307, 319 (1979) was met. The Report and Recommendation summarized that evidence:


As discussed by the state appellate court, the record reflects that Henry Harris observed petitioner riding a yellow bike in the area several hours before Rawlings was killed. Witnesses to the murder watched the killer ride a yellow bike to the pay phone immediately after shooting Rawlings in the head where the killer was heard asking for someone to come and get him. Petitioner placed a call from this same pay phone that lasted approximately seven minutes just after a 911 call was made to police and before Rawlings was transported by ambulance to the hospital. This was the only call made from the pay phone on that night of the murder during the time period at issue. "Circumstantial evidence alone, if substantial and competent, may support a verdict and need not remove every reasonable hypothesis except that of guilt." *United States v. Humphrey*, 279 F.3d 372, 378 (6<sup>th</sup> Cir. 2002), quoting *United States v. Talley*, 194 F.3d 758, 765 (6<sup>th</sup> Cir. 1999). Additionally, for the reasons detailed by the state appellate court, this Court agrees that the evidence construed in the light most favorable to the prosecution, *see Jackson v. Virginia, supra*, was

constitutionally sufficient to establish prior calculation and design under O.R.C. §2903 .01(A).

*Id.*, pp. 17-18. Petitioner fails to demonstrate that the Magistrate Judge's analysis of his claim that the prosecutor's brief comment in closing argument denied him a fair trial was in error. See, January 5, 2009 Report and Recommendation at pp. 22-28. For the reasons state in the Report and Recommendation, petitioner's claims 4, 5, 6, 7 and 9 are procedurally barred. *Id.*, pp. 34-49.

Pursuant to 28 U.S.C. §636(b), this Court has conducted a *de novo* review of the Magistrate Judge's *Report and Recommendation*. For the reasons detailed therein, petitioner's arguments are not persuasive. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

**IT IS SO ORDERED.**

 4-14-2009  
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EDMUND A. SARGUS, JR.  
United States District Judge