

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

NAWAZ AHMED,

Petitioner,

-vs-

MARC C. HOUK, Warden,

Respondent.

:

Case No. 2:07-cv-658

:

District Judge Michael H. Watson
Magistrate Judge Michael R. Merz

:

ORDER WITHDRAWING SUPPLEMENTAL OPINION

This capital habeas corpus case is before the Magistrate Judge on the filing of District Judge Watson's Opinion and Order (Doc. No. 83).

Petitioner filed his Motion for Discovery (Doc. No. 72) and his Motion for Evidentiary Hearing (Doc. No. 73) on June 21, 2011. After Respondent opposed the Motions (Doc. Nos. 74, 75) and Petitioner replied (Doc. No. 76), the Magistrate Judge denied these two Motions on September 8, 2011 (Doc. No. 77). Petitioner timely objected (Doc. No. 78).

Assuming the authority granted to Magistrate Judges by the then-extant General Order of Assignment and Reference for the Dayton location of court, the Magistrate Judge filed a Supplemental Opinion on the Motion (Doc. No. 79). When Petitioner sought an extension of time to object to the Supplemental Opinion (Doc. No. 80), the Magistrate Judge struck the Motion by notation order on the notion that parties do not have the right to file a second brief on appeal to a District Judge of a Magistrate Judge's order deciding a non-dispositive pretrial motion.

District Judge Watson has now pointed out that the Magistrate Judge's assumption of authority to file a supplemental opinion was mistaken. Whatever the General Order of Reference for Dayton may say or may have said¹, this case was referred to the undersigned "with the same authority given to Magistrate Judge King by the Standing Order² issued by the district judges seated in Columbus, Ohio." (Order, Doc. No. 55.)

Because District Judge Watson has ruled that the Supplemental Opinion (Doc. No. 79) was filed without authority, it is hereby WITHDRAWN. This case remains pending before District Judge Watson on Petitioner's Objections (Doc. No. 78) to the Magistrate Judge's Decision and Order Denying Petitioner's Motions for Discovery and an Evidentiary Hearing (Doc. No. 77).

In the absence of further order from District Judge Watson, this Order does not affect the extension of time granted by him to Petitioner to file objections to the Supplemental Opinion not later than December 30, 2012 (See Doc. No. 83, PageID 2021).

December 1, 2012.

s/ **Michael R. Merz**
United States Magistrate Judge

¹ Because of general concerns about the appropriateness of having Magistrate Judges file supplemental reports or opinions *sua sponte*, the General Order of Assignment and Reference for Dayton has been amended to eliminate the authority for such filings absent a specific recommitment order from the assigned District Judge. See General Order DAY 12-03.

² The referenced standing orders are Eastern Division Orders No. 91-3 and 95-2 (Opinion and Order, Doc. No. 83, PageID 2019).