

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

GERALD HAND,	:	
	:	Case No. 2:07-cv-846
Petitioner,	:	
-vs-	:	District Judge Sandra A. Beckwith
	:	Magistrate Judge Michael R. Merz
	:	
MARC HOUK, Warden,	:	
	:	
Respondent.	:	

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**DECISION AND ORDER DENYING MOTION FOR JUDGMENT  
ENTRY**

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This capital habeas corpus case is before the Court on Respondent’s Motion for Judgment Entry (Doc. No. 145). Respondent is concerned that there be a firm date from which to calculate Petitioner’s time to appeal.

On June 6, 2011, while this case was pending before District Judge Beckwith on the merits, the Magistrate Judge entered an Order for Pre-judgment Briefing on Certificate of Appealability (Doc. No. 107) which explained that Rules Governing § 2254 Cases had been amended to require that a decision on appealability be made in any “final order adverse to the applicant.” In order to comply with that new rule, the Magistrate Judge had to change his practice in capital habeas of waiting to make a recommendation on appealability until after the District Judge had decided the merits. To accomplish compliance in this case, where the Report and Recommendations on the merits had already been filed, Petitioner was ordered to brief that

question prior to judgment. *Id.* In a later entries, Petitioner's time to file a motion for certificate of appealability was extended such that the Motion for Certificate of Appealability was eventually timely filed November 21, 2013 (Doc. No. 142). The Report and Recommendations on that Motion was filed January 3, 2014 (Doc. No. 144); any objections are due by January 21, 2014.

It is contemplated by the Magistrate Judge that Judge Beckwith will enter a final judgment in this case when she rules on the Motion for Certificate of Appealability. Because of Rule 11 of the Rules Governing § 2254 Cases, a judgment entry at this point would be premature. See also Fed. R. Civ. P. 54.

Respondent's Motion for Judgment Entry is DENIED.

January 21, 2014.

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