

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

**JAMES T. CONWAY, III,**

**Petitioner,**

v.

**MARC C. HOUK, Warden,**

**Respondent.**

**Case No. 2:07-cv-947**

**JUDGE ALGENON L. MARBLEY  
Magistrate Judge Norah McCann King**

**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. 99), Petitioner's Response (ECF No. 104), and Respondent's Reply (ECF No. 107).

On July 16, 2012, this Court issued an *Opinion and Order* granting Petitioner leave to amend his Petition to add grounds nineteen and twenty. 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 15, 2012 (ECF No. 95) and Respondent filed an Amended Return of Writ on September 21, 2012 (ECF No. 100).

Respondent also filed a Fed. R. Civ. P. 12(b)(6) Motion to Dismiss Petitioner's claims. (ECF No. 99.) Respondent asserts that Petitioner's claims not only are non-cognizable in habeas corpus but also are time-barred under 28 U.S.C. § 2244(d).

Petitioner counters that "[t]he Court has already decided both issues adversely to the Warden in this litigation." (ECF No. 104, at PAGEID #: 6379.) Petitioner proceeds, in the event

this Court should determine that it had not already addressed these issues, to offer reasons why Respondent's arguments are not supported by the facts or the law. The Court need not address the latter because Petitioner is correct on the former.

In its July 16, 2012 *Opinion and Order* granting Petitioner leave to add grounds nineteen and twenty, 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 of a need to revisit issues it has already expressly determined. The Court is bolstered in its decision by the fact 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.); *Lindsey v. Bradshaw*, Case No. 1:03-cv-702, ECF No. 90 (Sargus, J.) ; *Phillips v. Warden*, 2:13-cv-791, ECF No. 15 (Lioi, J.).

For the foregoing reasons, Respondent's Motion to Dismiss (ECF No. 99) is **DENIED**.

**IT IS SO ORDERED.**

**DATED: September 11, 2013**

s/Algenon L. Marbley  
**ALGENON L. MARBLEY**  
**United States District Judge**