

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

DONALD EDWARDS,

Petitioner,

CASE NO. 2:08-cv-241

JUDGE GRAHAM

MAGISTRATE JUDGE KEMP

v.

WARDEN, CHILLICOTHE
CORRECTIONAL INSTITUTION,

Respondent.

OPINION AND ORDER

On April 7, 2009, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, petitioner's objections are **OVERRULED**.

Petitioner objects to the Magistrate Judge's recommendation of dismissal of his claim of ineffective assistance of counsel on the merits. Petitioner again argues at length that he was denied the effective assistance of counsel because his attorney failed to object to hearsay statements by Officer Carver that the neighbors found a green jacket and Wal Mart bag containing jewelry on the car in their driveway. Additionally, petitioner now asserts that his attorney failed to properly investigate the case and cross examine witnesses. These latter claims were not previously presented to the state courts, nor in petitioner's initial habeas corpus petition, and therefore will not now be considered here.

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 discussed therein, this

Court likewise concludes that petitioner has failed to establish prejudice from admission of the hearsay statements at issue.

Petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

Date: May 29, 2009