

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

ALFRED ANDERSON,

Petitioner,

v.

CASE NO. 2:08-CV-417
JUDGE MARBLEY
MAGISTRATE JUDGE KING

ROBIN KNAB, Warden,

Respondent.

ORDER

On November 3, 2009, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus be dismissed. *Report and Recommendation*, Doc. No. 16. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. *Objection*, Doc. No. 17. For the reasons that follow, petitioner's objections are overruled.

Petitioner objects to the Magistrate Judge's recommendation of dismissal of claims one and three as without merit.¹ In claim one, petitioner contends that the trial court's imposition of a maximum term of eight years incarceration on his felonious assault conviction violated *Blakely v. Washington*, 542 U.S. 296 (2004). Plaintiff specifically argues that, in order to impose such sentence, the trial court must have found that petitioner had committed the worst form of the offense or posed the greatest likelihood of committing future crimes. *See* O.R.C. §2929.14(C). In claim three, petitioner asserts that his attorneys performed in a constitutionally ineffective manner by

¹As noted in the *Report and Recommendation*, p.22, petitioner withdrew claim two. *See Traverse*, p.3.

failing to raise a *Blakely* objection at sentencing or on direct appeal. *See Objections.*

Pursuant to 28 U.S.C. §636(b), this Court has conducted a *de novo* review. Upon review of the entire record, and for the reasons detailed in the Magistrate Judge's *Report and Recommendation*, this Court likewise concludes that the trial court, in imposing sentence, did not make factual findings beyond those implicit in the jury's finding of guilt or based on petitioner's prior criminal record, *i.e.*, permissible factors under *Blakely*. *See Blakely, supra*, 542 U.S. at 303-04; *Transcript*, at 532-38. *See also Report and Recommendation*, pp. 19-21. Counsel was therefore not ineffective in failing to raise a *Blakely* objection either at sentencing or on appeal.

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

The Clerk shall enter **FINAL JUDGMENT**.

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