

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

GREGORY HOUSTON,

Petitioner,

v.

CASE NO. 2:08-CV-591; 2:08-CV-595
JUDGE HOLSCHUH
MAGISTRATE JUDGE KING

MICHAEL SHEETS, Warden,

Respondent.

OPINION AND ORDER

On February 2, 2010, the Magistrate Judge issued a *Report and Recommendation* recommending that the petitions for a writ of habeas corpus pursuant to 28 U.S.C. §2254 filed in these consolidated cases be dismissed. The Magistrate Judge specifically reasoned that claims one through four, and claim six, had been waived and that claim five failed to assert a federal claim for relief. *Report and Recommendation*, Doc. No. 18. Although the parties were advised of the right to object to the Magistrate Judge's *Report and Recommendation*, and of the consequences of failing to do so, no objections have been filed. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. For the reasons that follow, petitioner's request for a stay, Doc. No. 25, is **DENIED**. These actions are hereby **DISMISSED**.

Petitioner requests a stay of these proceedings pending resolution of his request in the state trial court for a new sentencing hearing under *State v. Boswell*, 121 Ohio St.3d 575 (2009), superseded by statute as stated in *State v. Singleton*, 124 Ohio St.3d 173 (2009).

Petitioner argues that the current judgment entry of sentence is defective because it does not indicate the length of time that petitioner is required to serve on post release control. It appears that petitioner intends to assert this new claim in these proceedings upon completion of state court proceedings. *See Motion to Stay Proceedings.*

Assuming, without deciding, that petitioner could amend his federal habeas corpus petitions to include this new claim, a stay of proceedings is not warranted. Petitioner's proposed claim, which is currently unexhausted, presents an issue of only state law. In any event, it does not appear that such a claim has merit, nor that petitioner can establish good cause for failing to earlier exhaust state court remedies on this claim. *See Rhines v. Weber*, 544 U.S. 269 (2005).

Therefore, petitioner's request for a stay, Doc. No. 25, is **DENIED**.

The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. These actions are hereby **DISMISSED**.

The Clerk shall enter **FINAL JUDGMENT**.

Date: March 2, 2010

/s/ John D. Holschuh
JOHN D. HOLSCHUH
United States District Judge