

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

John G. Comsa, III, :
 :
 Petitioner : Civil Action 2:08-cv-00815
 :
 v. : Judge Sargus
 :
 Warden, Noble Correctional : Magistrate Judge Abel
 Institution :
 :
 Respondent :
 :

ORDER

Petitioner John G. Comsa, III, a State prisoner, brings this action under 28 U.S.C. §2254 alleging that he is in custody in violation of the Constitution of the United States. This matter is before the Court on Magistrate Judge Abel's January 13, 2010 Report and Recommendation (doc. 8) that the petition for writ of habeas corpus under 28 U.S.C. §2254 be denied.

On February 2, 2010, petitioner Comsa filed objections to the Report and Recommendation (doc. 10). Petitioner argues that the evidence was constitutionally insufficient to sustain his convictions on having weapons while under disability and grand theft of a firearm because the State introduced no direct or circumstantial evidence to support the jury's conclusion that the firearms were operable. The Ohio Court of Appeals found that there was sufficient evidence for reasonable jurors to conclude beyond a reasonable doubt that the gun was operable. State court finds of fact are presumed to be correct. 28 U.S.C. 2254(e)(1). To obtain relief in federal habeas

corpus, petitioner has the burden of demonstrating that the Court of Appeals' decision was an unreasonable application of clearly established federal law or based on an unreasonable determination of the facts in light of the evidence. 28 U.S.C. §2254(d)(1) and (2). For the reasons discussed in the January 13 Report and Recommendation at pages 5-12 , the Court determines that the Ohio Court of Appeals decision was not an unreasonable application of clearly established federal law or based on an unreasonable determination of the facts in light of the evidence. 28 U.S.C. §2254(d)(1) and (2).

Upon *de novo* review as required by 28 U.S.C. §636(b)(1)(B), the Court ADOPTS the Report and Recommendation.

The petition for writ of habeas corpus is DENIED. This action is hereby DISMISSED. The Clerk of Court is DIRECTED to enter JUDGMENT for respondent.

 2-8-2010

Edmund A. Sargus, Jr.
United States District Judge