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

MARCUS PIERCE,

Petitioner,

CASE NO. 2:08-cv-01079
JUDGE SARGUS
MAGISTRATE JUDGE ABEL

v.

WARDEN, NOBLE CORRECTIONAL INSTITUTION,

Respondent.

OPINION AND ORDER

On January 25, 2010, 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**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED.** This action is hereby **DISMISSED**. Petitioner's motion for judgment, Doc. No. 11, is **DENIED**, as moot.

Petitioner objects to the Magistrate Judge's recommendation of dismissal of his claims. He again contends that his guilty plea was unlawfully induced by intimidation from counsel, and argues that his sentence violated *Blakely v. Washington*, 542 U.S. 296 (2004), and due process. However, as discussed by the Magistrate Judge, petitioner's sentence, which was imposed pursuant to the terms of petitioner's negotiated guilty plea and the joint recommendation of the parties, did not violate *Blakely*. Further, to the extent that he alleges that his guilty plea was coerced or the product of intimidation and the ineffective assistance of counsel, such claim relies on evidence not readily apparent from

the face of the record, and would be properly raised in a petition for post conviction relief pursuant to O.R.C. §2953.21; however, the time period for filing such action in the state courts has long since expired, and the record fails to reflect that petitioner can meet the requirements for consideration of his claims in an untimely post conviction action. *See* O.R.C. §2953.23.

Pursuant to 28 U.S.C. §636(b), this Court has conducted a *de novo* review. For the foregoing reasons and for the reasons detailed in the Magistrate Judge's *Report and Recommendation*, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED.** This action is hereby **DISMISSED**. Petitioner's motion for judgment, Doc. No. 11, is **DENIED**, as moot.

IT IS SO ORDERED.

6-10-2010

EDMUND A. SARGUS, JR.
United States District Judge