

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

JOHN C. LOCKHART, JR.,

Petitioner,

v.

CASE NO. 2:09-CV-443

JUDGE EDMUND A. SARGUS, JR.

MAGISTRATE JUDGE E.A. PRESTON DEEVERS

ROBERT WELCH, WARDEN,

Respondent.

OPINION AND ORDER

On December 17, 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*,¹ as well as a request for the appointment of counsel and request for a certificate of appealability. For the reasons that follow, Petitioner's objections (Doc. 22) are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner's request for a certificate of appealability (Doc. 23) is **DENIED**.

Petitioner objects to the Magistrate Judge's recommendation of dismissal of his habeas corpus petition. He again raises all of the arguments he previously presented. Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the reasons already detailed in the Magistrate Judge's *Report and Recommendation*, Petitioner's objections are not well taken and are hereby **OVERRULED**.

¹ Although the Court granted Petitioner's motion for an extension of time until January 21, 2011, to supplement his objections (see Docs. 26, 27), Petitioner did not file such any supplement to his objections.

As to Petitioner's request for a certificate of appealability, where, as here, the Court dismisses a claim on the merits, a certificate of appealability may issue only if the Petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). This standard is a codification of *Barefoot v. Estelle*, 463 U.S. 880 (1983). *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). To make a substantial showing of the denial of a constitutional right, a petitioner must show

that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further." *Barefoot*, 463 U.S., at 893, and n.4

Id. Petitioner has failed to meet this standard here.

Petitioner's objections (Doc. 22) are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner's request for a certificate of appealability (Doc. 23) is **DENIED**.

IT IS SO ORDERED.

 2-3-2011
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE