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

Michael Withers,

Petitioner, **Case Nos. 2:09-cv-494 and 2:09-cv-502**

v.

Michael Sheets, Warden, **Judge Michael H. Watson**
Magistrate Judge Abel

Respondent.

OPINION AND ORDER

On November 29, 2010, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant consolidated petition under 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 (Doc. 15) are **OVERRULED.** The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED.**

Petitioner objects to the Magistrate Judge's recommendation of dismissal of his claims as procedurally defaulted. Petitioner argues that the Ohio Supreme Court's denial of his motion for a delayed appeal failed to enforce the State's procedural bar. Also, he states it was through no fault of his own that his appeal was untimely, because he attempted to file a timely appeal, but it was returned to him for failing to comply with the rules of the Ohio Supreme Court.

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the reasons set forth in the Magistrate Judge's *Report and Recommendation,* Petitioner's objections are overruled. Petitioner's failure to file a timely appeal that complied with the

rules of the Ohio Supreme Court does not constitute cause for his procedural default. Further, in view of the United States Court of Appeals for the Sixth Circuit's decision in *Bonilla v. Hurley*, 370 F.3d 494, 497 (6th Cir. 2004), his argument that the Ohio Supreme Court's denial of his motion for delayed appeal fails the test set forth under *Maupin v. Smith*, 785 F.2d 135, 138 (6th Cir. 1986), likewise is not persuasive.

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

IT IS SO ORDERED.

MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT