

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

Michael Lee Gordon, :  
 :  
 Petitioner : Civil Action 2:09-cv-00929  
 :  
 v. : Judge Sargus  
 :  
 State of Ohio : Magistrate Judge Abel  
 :  
 Respondent :

ORDER

Petitioner Michael Lee Gordon, a federal prisoner challenging his state court convictions, brings this action for writ of habeas corpus under 28 U.S.C. §2254. This matter is before the Court on petitioner's notice of appeal, apparently from the Court's October 13, 2012 Order (doc. 12) denying his motion to reopen this case.

As the Court has previously held, this is a successive petition for writ of habeas corpus. The Court transferred this case to the United States Court of Appeals for the Sixth Circuit. On February 18, 2011, the Court of Appeals denied petitioner leave to file a successive petition.

Petitioner Gordon's March 11, 2011 motion for relief from judgment (doc. 9) and his motion to reopen this case (doc. 12) both again alleged that the prosecutor violated *Brady v. Maryland*, 373 U.S. 83 (1963) by failing to disclose a witness's statements that Gordon was not present when the victim was murdered. The United States Court of

Appeals for the Sixth Circuit has already denied petitioner leave to pursue this claim in a successive petition.

Petitioner has not paid the \$455 filing fee for an appeal, and he has not filed a motion to proceed on appeal *in forma pauperis*. Because it is clear that petitioner “cannot make any claims with a rational or arguable basis in law or in fact,” *Lawler v. Marshall*, 898 F.2d 1196, 1198 (6th Cir. 1990), the appeal is not taken in good faith. 28 U.S.C. §1915(a)(3). *McGore*, 114 F.3d at 610-11 (6th Cir. 1997). *See also Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Accordingly, it is ORDERED that petitioner Gordon pay the \$455 filing fee for an appeal within **twenty-eight days of the date of this Order**.

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1)(B); Rule 72(b), Fed. R. Civ. P.

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *Thomas v. Arn*, 474 U.S. 140, 150-52 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also, Small v. Secretary of Health and Human Services*, 892 F.2d 15, 16 (2d Cir. 1989).

The Clerk of Court is DIRECTED to mail a copy of the complaint and this Report and Recommendation to respondent.

s/Mark R. Abel \_\_\_\_\_  
United States Magistrate Judge