

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

ROLAND T. DAVIS,

Petitioner,

v.

MARC C. HOUK, Warden,

Respondent.

Case No. 2:10-cv-107

JUDGE EDMUND A. SARGUS, JR.

Magistrate Judge Norah McCann King

ORDER

Petitioner, a prisoner sentenced to death by the State of Ohio, has filed a notice of intent to file a habeas corpus petition. Petitioner has been granted permission to proceed *in forma pauperis* and has been appointed counsel. (Doc. # 6.) In its *Initial Scheduling Order*, the Court charged co-counsel Kort Gatterdam with the task of filing a statement reflecting his assessment of the legal sufficiency of any appellate counsel ineffectiveness claims available to Petitioner and, if applicable, an affidavit by Petitioner stating his express and counseled decision to waive those claims. (Doc. # 11, at 1-2.) This matter is before the Court upon Mr. Gatterdam's summary report, filed on May 14, 2010 *ex parte* and under seal. (Doc. # 14.)


Petitioner is represented by the Federal Defender for the Southern District of Ohio and attorney Kort Gatterdam. Litigating on behalf of the Federal Defender are Assistant Federal Defenders David Stebbins and Carol Wright, who represented Petitioner on his direct appeal of right. Having been advised that Petitioner was insistent upon Mr. Stebbins and Ms. Wright continuing to represent him in this habeas corpus action, the Court directed co-counsel Kort Gatterdam to perform an independent assessment of the legal sufficiency of any ineffective assistance of appellate counsel claims that might be compromised or waived by the fact that Mr.

Stebbins and Ms. Wright represent Petitioner in this matter, and to meet with and advise Petitioner concerning the same.

To that end, Mr. Gatterdam filed the instant summary report reflecting his professional opinion that the nine (9) claims of appellate counsel ineffectiveness available to Petitioner lack legal sufficiency and should not be raised in the habeas corpus petition. (Doc. # 14.) Mr. Gatterdam also notes that he discussed the nine claims in detail with Petitioner and advised Petitioner of his opinion that the claims lack merit. Having done so, Mr. Gatterdam states his professional opinion that Petitioner is competent to make a voluntary, knowing, and intelligent waiver of these claims, and attaches as Exhibit A an affidavit signed by Petitioner Davis expressly waiving the appellate counsel ineffectiveness claims available to him.

For good cause shown, the Court accepts Mr. Gatterdam's assessment, recognizes Petitioner's express and voluntary waiver of the nine (9) appellate counsel ineffectiveness claims discussed in Mr. Gatterdam's summary report, and reaffirms its appointment of Assistant Federal Defenders David Stebbins and Carol Wright to represent Petitioner in this matter.

IT IS SO ORDERED.

 7-28-2010
EDMUND A. SARGUS, JR.
United States District Judge