

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

ROBERT BETHEL,

Petitioner,

-vs-

DAVID BOBBY, Warden,

Respondent.

:

Case No. 2:10-cv-391

:

District Judge Michael R. Barrett
Magistrate Judge Michael R. Merz

:

SUPPLEMENTAL REPORT AND RECOMMENDATIONS

This capital habeas corpus case is before the Court on Respondent's Objections (Doc. No. 37) to the Magistrate Judge's Report and Recommendations (Doc. No. 35) recommending that the Warden's Motion to Dismiss (Doc. No. 29) be denied. Petitioner has responded to the Objections (Doc. No. 39) and Judge Barrett has recommitted the matter to the Magistrate Judge for reconsideration.

As both parties acknowledge, the Warden's Motion is classified as "dispositive" by law and the District Judge is to review recommendations on such a motion *de novo*.

The Warden's objection that Bethel's method of execution claims cannot proceed simultaneously in both 1983 and habeas litigation, rejected by the Magistrate Judge, has also been rejected by Judge Sargus. *Chinn v. Bradshaw*, No. 3:02-cv-512, 2012 WL 2674518 (S.D. Ohio July 5, 2012)(overruling the Warden's Objections to a parallel recommendation in that case). While district judges of the same court are not bound to follow one another's rulings on similar motions, in these two cases (and many other capital habeas corpus cases presently

pending in this District) the Court is dealing with the same sets of litigators on both sides of the cases. Furthermore, there is as yet no guidance from the Sixth Circuit beyond the decision in *Adams v. Bradshaw*, 644 F.3d 481 (6th Cir. 2011). Under those circumstances, consistent treatment of the questions seems at least prudentially suggested.

With respect to the Warden's statute of limitations argument, the Magistrate Judge believes it should be rejected for the reasons given on the same point in *Waddy v. Coyle*, No. 3:98-cv-84, 2012 WL 2711461 (S.D. Ohio July 9, 2012).

It is therefore again respectfully recommended that the Motion to Dismiss be denied.

October 25, 2012.

s/ *Michael R. Metz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed.R.Civ.P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed.R.Civ.P. 6(e), this period is automatically extended to seventeen days because this Report is being served by one of the methods of service listed in Fed.R.Civ.P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See, United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).