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

THOMAS CHILDERS,

Petitioner,

v.

WARDEN, CHILLICOTHE CORRECTIONAL INSTITUTION,

Respondent.

CASE NO. 2:13-CV-991
JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Elizabeth P. Deavers

OPINION AND ORDER

On June 26, 2014, the Magistrate Judge issued a *Report and Recommendation* recommending that Respondent's *Motion to Dismiss* the instant petition under 28 U.S.C. § 2254 be granted and that this action be dismissed without prejudice as unexhausted. Alternatively, the Magistrate Judge recommended that Petitioner be permitted to delete his unexhausted claim and proceed on his remaining claims. On July 9, 2014, Petitioner filed an *Objection* to the Magistrate Judge's *Report and Recommendation.*

Petitioner raises no new arguments in support of his *Objection.* He again argues that futility warrants an exception to the exhaustion requirement in this case, and alternatively, that a stay pending exhaustion is appropriate. In the event that the Court overrules Petitioner's *Objection,* Petitioner requests to delete his unexhausted claim of ineffective assistance of appellate counsel and proceed on his remaining claims.

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the reasons already addressed in the Magistrate Judge's *Report and Recommendation*, Petitioner's *Objection,* (Doc. No. 13) is not well taken and is **OVERRULED.** The *Report and Recommendation,* (Doc. No. 11), is **ADOPTED** and **AFFIRMED**. Petitioner's request for a

stay is **DENIED**. Petitioner's request to delete this claim and proceed on his remaining exhausted claims is **GRANTED.** Respondent's *Motion to Dismiss* (Doc. No. 9) is accordingly **DENIED AS MOOT** to the extent that Petitioner's unexhausted claim of ineffective assistance of appellate counsel is now deleted from the *Petition.*

Respondent is **DIRECTED** to file an answer to the *Petition* that complies with Rule 5 of the Rules Governing Section § 2254 Cases in the United States District Courts within twenty-one (21) days. Petitioner may file a response within twenty-one (21) days thereafter.

IT IS SO ORDERED.

8-4-2014

EDMUND A. SARGUS, JR.
United States District Court