

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

BRIAN C. KOON,

Petitioner,

v.

CASE NO. 2:16-CV-00950

JUDGE ALGENON L. MARBLEY

Magistrate Judge Kimberly A. Jolson

**WARDEN, MADISON
CORRECTIONAL INSTITUTION,**

Respondent.

OPINION AND ORDER

On March 24, 2017, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed. (Doc. 9.) Petitioner has filed an *Objection* to the Magistrate Judge's *Report and Recommendation*. (Doc. 10.) Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the reasons that follow, Petitioner's *Objection* (Doc. 10) is **OVERRULED**. The *Report and Recommendation* (Doc. 9) is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner challenges his convictions after a jury trial in the Delaware County Court of Common Pleas on possession of heroin and endangering children. He asserts that the evidence is constitutionally insufficient to sustain his conviction on possession of heroin and that it is against the manifest weight of the evidence (claims one and two); that the trial court improperly denied his request for a new trial based on improper admission of testimony by Trooper Brooks (claim three); and that the trial court committed reversible error when it denied his motion for a new trial and motion for judgment of acquittal (claim four). The Magistrate Judge recommended dismissal of Petitioner's claims on the merits. Petitioner objects to the Magistrate Judge's

recommendation of dismissal of his claim that the evidence was constitutionally insufficient to sustain his conviction on possession of heroin.

Petitioner again argues that the State failed to establish that he had actual or constructive possession of heroin found at the scene of the crash, particularly since two persons from another vehicle assisted him in collecting his personal effects. Petitioner maintains that the evidence could equally indicate that the occupants of the other vehicle threw the drugs and other paraphernalia into the accident scene when they saw police arrive, or that these items were there prior to the time of the accident. Additionally, Petitioner complains that Officer Brooks testified that he found 19.452 grams of heroin, yet the jury found him guilty of only 10 grams of heroin.

Petitioner's arguments are not persuasive. As noted by the state appellate court,

[t]he State introduced evidence that Koon had been a passenger in a vehicle that had rolled over several times and discharged many items from the inside. State troopers who arrived at the scene found a "loaded" syringe with .403 grams of heroin, additional heroin weighing 19.452 grams, and other evidence of drug use located within the "debris field" left by the vehicle. They witnessed Koon diligently searching the field apparently for items thrown from the vehicle to the exclusion of attending to his injured 12-year-old son who was lying on the pavement screaming in pain. Koon acknowledged his ownership of the items that were lying in the debris field by telling Trooper Brooks that "his whole life was ruined and scattered on the ground." On Koon's shirt the troopers also noticed a sticky brown substance which he claimed was mud or dirt from the accident. But Trooper Dennis testified that he believed that based on his experience, the spot was liquefied heroin.

State v. Koon, No. 15CA17, 2016 WL 527289, at *1 (Ohio App. 4th Dist. Feb. 3, 2016). This Court agrees that, when viewing these facts in the light most favorable to the prosecution, *see Jackson v. Virginia*, 443 U.S. 307, 319 (1979), the evidence was constitutionally sufficient to sustain Petitioner's conviction on 10 grams of heroin. The record therefore fails to reflect that Petitioner is entitled to relief, particularly under the heightened standard of review requiring a

“double layer” of deference to state court determinations on the sufficiency of evidence. *See Brown v. Konteh*, 567 F.3d 191, 205 (6th Cir. 2009); *White v. Steele*, 602 F.3d 707, 710 (6th Cir. 2009).

For these reasons and for the reasons as further detailed in the Magistrate Judge’s Report and Recommendation, Petitioner’s *Objection* (Doc. 10) is **OVERRULED**. The *Report and Recommendation* (Doc. 9) is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
United States District Judge

DATED: June 9, 2017