

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

Matthew Tassone,

Petitioner,

v.

Case No. 2:24-cv-2123

Judge James L. Graham

Magistrate Judge Chelsey M. Vascura

Judge James E. Green,

Respondent.

Order

This matter is before the Court on the Magistrate Judge's Report and Recommendation, which recommended that Petitioner's habeas corpus petition brought under 28 U.S.C. § 2241 be dismissed without prejudice for failure to exhaust available state-court remedies. No objections to the Report and Recommendation have been filed. Upon review, the Court agrees with the Report and Recommendation (Doc. 9), which is hereby adopted. Petitioner's habeas corpus petition (doc. 2) is DISMISSED WITHOUT PREJUDICE.

Further, the Magistrate Judge recommended that the case caption be updated to reflect that Franklin County Municipal Court Judge James E. Green (and not Judge Jessica G. D'Varga) is the correct respondent in this action. The Court adopts that recommendation as well.

The Court further finds that a certificate of appealability should not issue because, for the reasons stated in the Report and Recommendation, Petitioner has not made a substantial showing of the denial of a constitutional right that is remediable at this juncture in this proceeding. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

Finally, the Court certifies pursuant to 28 U.S.C. §1915(a)(3) that an appeal of this order would not be taken in good faith for the reasons stated in the Report and Recommendation. Therefore, the Court declines to grant Petitioner leave to proceed on appeal *in forma pauperis*. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

DATE: October 24, 2024

s/ James L. Graham

JAMES L. GRAHAM

United States District Judge