

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

WARREN WADDY,	:	Case No. 3:98-cv-84
	:	
Petitioner,	:	Judge Timothy S. Black
	:	Magistrate Judge Michael R. Merz
vs.	:	
	:	
RALPH COYLE, WARDEN,	:	
	:	
Respondent.	:	

**DECISION AND ENTRY OVERRULING RESPONDENT’S OBJECTIONS TO
THE DECISION AND ORDER OF THE MAGISTRATE JUDGE (DOC. 184, 197)**

This capital habeas corpus case is before the Court following the Decision and Order of the Magistrate Judge granting Petitioner Leave to File an Amended Petition adding two additional grounds for relief: (1) that Petitioner’s “execution will violate the Eighth Amendment because Ohio’s lethal injection protocol will result in cruel and unusual punishment[;]” and (2) that Petitioner’s “execution will violate the Fourteenth Amendment because Ohio’s lethal injection protocol will deprive him of equal protection of the law.” (Doc. 182). Respondent filed Objections to the Decision and Order. (Doc. 184) Petitioner filed a Response to Respondent’s Objections. (Doc. 185).

Subsequently, the Court recommitted these issues to the Magistrate Judge for further analysis. (Doc. 187). Thereafter, the Magistrate Judge issued a Supplemental Opinion and Recommendation concluding that Respondent’s Objections are without merit under the applicable standard of review. (Doc. 188). Respondent filed additional Objections to the Magistrate Judge’s Supplemental Opinion and Recommendation. (Doc.

197). Petitioner filed a Response to Respondent's additional Objections. (Doc. 198).

These issues are now ripe for the Court's consideration.

Both parties acknowledge that the Court's review of the Magistrate Judge's Decision and Order is governed by Fed. R. Civ. P. 72(a), which provides that, following the issuance of an order by a Magistrate Judge on a nondispositive issue, "[a] party may serve and file objections to the order within 14 days[,]" and thereafter, "[t]he district judge . . . must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law." The Court reviews the Magistrate Judge's factual findings under the "clearly erroneous" standard and the Magistrate Judge's legal conclusions "under the more lenient 'contrary to law' standard." *Itskin v. Gibson*, No. 2:10-cv-689, 2012 WL 787400, at *1 (S.D. Ohio Mar. 9, 2012) (citing *Gandee v. Glaser*, 785 F.Supp. 684 (S.D. Ohio 1992), *aff'd* 19 F.3d 1432 (6th Cir.1994) (table)). Under both standards, however, the Court must "provide considerable deference to the determinations made by the magistrate judge." *Moran v. Svete*, C-3-05-072, 2012 WL 1142929, at *1 (S.D. Ohio Apr. 4, 2012) (citations omitted).

Here, Respondent contends that the Decision and Order of the Magistrate Judge is contrary to law for two reasons: (1) Petitioner's claims challenging Ohio's lethal injection protocol are not cognizable in habeas review; and (2) Petitioner's claims are barred by the statute of limitations, 28 U.S.C. § 2244(d)(1)(D). In reviewing a nondispositive order pursuant to the "contrary to law" standard, "[t]his Court's review . . . is 'plenary.'" *Gandee*, 785 F. Supp. at 686 (citation omitted). This Court "may overturn any

conclusions of law which contradict or ignore applicable precepts of law, as found in the Constitution, statutes, or case precedent.” *Id.* (citation omitted).

With regard to Respondent’s contention that Petitioner’s proposed amendments are not cognizable in habeas, the Magistrate Judge appropriately cited binding Sixth Circuit precedent holding otherwise, *i.e.*, that challenges to Ohio’s legal injection procedures are cognizable in a habeas petition. *Adams v. Bradshaw*, 644 F.3d 481, 482-83 (6th Cir. 2011). Concerning Respondent’s contention that Petitioner’s amendments are barred by the statute of limitations, the Court is unable to conclude that the Magistrate Judge’s conclusions are clearly erroneous or contrary to law. *See Chinn v. Bradshaw*, No. 3:02-cv-512, 2012 WL 2674518, *3-4 (S.D. Ohio Jul. 5, 2012).

Accordingly, for the reasons set forth by the Magistrate Judge (Docs. 182, 188), which the Court must give considerable deference, and for the reasons set forth above, Respondent’s Objections (Docs. 184, 197) are **OVERRULED**.

IT IS SO ORDERED.

Date: 1/3/13

s/ Timothy S. Black
Timothy S. Black
United States District Judge