

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

TIMOTHY L. COLEMAN,

Petitioner,

-vs-

MARGARET BRADSHAW, Warden,

Respondent.

:

Case No. 3:03-cv-299

:

District Judge Edmund A. Sargus, Jr.
Magistrate Judge Michael R. Merz

:

PRETRIAL CONFERENCE ORDER

This case came on for initial pretrial conference, following the transfer of reference, on Thursday, October 29, 2009. Petitioner was represented by Assistant State Public Defenders Kelly Schneider and Robert Lowe; the Warden was represented by Assistant Attorneys General Stephen Maher and Thomas Madden.

There apparently remain outstanding some discovery issues, although no motions are listed as pending on the ECF motions list for the case. In addition, there are complications involving the DNA testing allowed by Judge Sargus and the parties are not in agreement about the effect to be given to the previously ordered expansion of the record.

In provide guidance for completing the case and to orient the Court, counsel must prepare and file by November 10, 2009, a joint status report listing all outstanding issues requiring the Court's decision and a proposed schedule for the remaining steps necessary to bring the case to conclusion.

Although it was not mentioned during the conference, this case will be handled as has been customary with cases assigned to Western Division district judges and referred to the undersigned. After discovery is complete, either party may move for an evidentiary hearing within the parameters permitted by 28 U.S.C. § 2254(e). After any evidentiary hearing, both parties may brief the issues to be decided. The Magistrate Judge takes the position that evidence which could not be introduced because of the limitations in §2254(e) cannot be brought in by the alternative route of expanding the record. At least when the weight of evidence may depend on the credibility of witnesses, the Magistrate Judge strongly prefers live testimony to deposition testimony and to affidavits. All of this is said by way of announcing general preferences and is without prejudice to any rights either party may insist on to proceed differently.

October 29, 2009.

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