

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

JAMES T. CONWAY, III

Petitioner,

-vs-

MARC C. HOUK, Warden,

Respondent.

:

Case No. 3:07-cv-345

:

District Judge Timothy S. Black
Magistrate Judge Michael R. Merz

:

**DECISION AND ORDER STRIKING RESPONDENT’S SUMMARY JUDGMENT
MOTION AND VACATING PERMISSION TO PETITIONER TO FILE SUMMARY
JUDGMENT MOTION**

This case is before the Court on Respondent’s Motion for Summary Judgment and/or Dismissal (Doc. No. 91) and *sua sponte* for reconsideration of the notation Order granting Petitioner’s Motion for Leave to File Summary Judgment (Doc. No. 97).

Respondent’s summary judgment motion suffers from the same difficulties presented by Respondent’s Motion for Judgment on the Pleadings in *McKnight v. Bobby*, Case No. 2:09-cv-059. That is, it is an extremely summary argument incorporating, in index fashion, arguments made in other papers. Allowing it to be filed and then allowing Petitioner also to file a summary judgment motion does not conduce to an orderly comprehensive presentation of this case to the District Judge for decision, instead resulting in piecemeal litigation likely to produce unnecessary delay.

Accordingly, for the reasons stated in the decisions striking the Rule 12(c) motion in *McKnight* and denying leave to file such a motion in *Gapen v. Bobby*, Case No. 3-08-cv-280,

Respondent's summary judgment motion (Doc. No. 91) is stricken and the leave granted Petitioner to file a summary judgment motion is vacated.

Either party may file a motion seeking an evidentiary hearing in this case not later than December 1, 2010.

November 15, 2010.

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