

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

ROBERT BUTT,

Petitioner,

:

Case No. 3:09-cv-395

:

-vs-

Magistrate Judge Michael R. Merz

ROBIN KNAB, Warden,
Chillicothe Correctional Institution,

:

Respondent.

DECISION AND ORDER

This habeas corpus case is before the Court on Respondent's Motion to Dismiss (Doc. No. 7). On December 30, 2009, the Magistrate Judge filed a Report and Recommendations recommending that the Motion to Dismiss for lack of exhaustion be denied because Petitioner no longer had available to him the remedy suggested by the Warden.

In filing the Report, the Magistrate Judge failed to advert to the fact that the parties have unanimously consented to plenary magistrate judge jurisdiction in this case and it has been referred on that basis (Doc. No. 6). Because this is a "full consent" case, there is no function served by a report and recommendations. Rather, the Magistrate Judge has authority to decide the Motion to Dismiss even though it is a motion classified as dispositive by statute.

Accordingly, it is hereby ORDERED, for the reasons given in the Report and Recommendations that the Motion to Dismiss be, and it hereby is, denied. Respondent's Answer shall be filed not later than January 25, 2010.

January 7, 2010.

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