

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

MARK THORNTON

Petitioner,

-v-

STATE OF OHIO

Respondent.

Case No. C-3:10-cv-236

Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

ENTRY AND ORDER OVERRULING THORNTON'S OBJECTIONS (Doc. #9) TO THE MAGISTRATE JUDGE'S SUBSTITUTED REPORT AND RECOMMENDATIONS; ADOPTING THE MAGISTRATE JUDGE'S SUBSTITUTED REPORT AND RECOMMENDATIONS (Doc. #6) AND SUPPLEMENTAL SUBSTITUTED REPORT AND RECOMMENDATIONS (Doc. #11) IN THEIR ENTIRETY; DISMISSING THORNTON'S PETITION FOR A WRIT OF HABEAS CORPUS WITH PREJUDICE; DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS*; DENYING ANY REQUESTED CERTIFICATE OF APPEALABILITY; AND TERMINATING THIS CASE

This matter comes before the Court pursuant to pro se Petitioner Mark Thornton's ("Thornton's") Objections (doc. #9) to Magistrate Judge Michael R. Merz's Substituted Report and Recommendations (doc. #6). This Substituted Report and Recommendations was substituted by Magistrate Judge Merz for a prior Report and Recommendations (doc. #3). Since Thornton's Objections were filed, Magistrate Judge Merz has entered a Supplemental Substituted Report and Recommendations. (Doc. #11.) All three report and recommendations reach the same conclusion: Thornton's Petition for a Writ of Habeas Corpus should be dismissed with prejudice because Thornton is using this § 2241 proceeding to attempt to attack the convictions used to enhance his sentence and that claim is procedurally defaulted because it was not raised at sentencing or on direct appeal.

The Supplemental Substituted Report and Recommendations was entered on September 30, 2010. The time has run and Thornton has not objected to the Supplemental Substituted Report and Recommendations. Thus, Taylor's Objections to the Substituted Report and Recommendations are ripe for decision.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Thornton's Objections to the Magistrate Judge's Substituted Report and Recommendations are not well-taken, and they are hereby OVERRULED. Further, as applied to the Report and Recommendations and the Supplemental Substituted Report and Recommendations, Thornton's Objections are also not well-taken and are overruled. The Magistrate Judge's Substituted Report and Recommendations and Supplemental Substituted Report and Recommendations are adopted in their entirety.

Thornton's Petition for a Writ of Habeas Corpus is dismissed with prejudice because Thornton is using this § 2241 proceeding to attempt to attack the convictions used to enhance his sentence and that claim is procedurally defaulted because it was not raised at sentencing or on direct appeal. Further, Thornton is denied leave to appeal in forma pauperis and any requested certificate of appealability. Finally, The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

DONE and **ORDERED** in Dayton, Ohio, this Twenty-First Day of October, 2010.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

Mark Thornton at his last address of record