

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

VIRGIL SMITH,

Petitioner,

vs.

WARDEN, TOLEDO CORRECTIONAL
INSTITUTION,

Respondent.

:

:

Case No. 3:10cv367

:

JUDGE WALTER HERBERT RICE

:

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS AND ORDER OF THE UNITED STATES MAGISTRATE JUDGE (DOC. #23) IN THEIR ENTIRETY AND OVERRULING PETITIONER'S OBJECTIONS (DOC. #25) THERETO; JUDGMENT TO ENTER IN FAVOR OF RESPONDENT AND AGAINST PETITIONER DENYING PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS AND DISMISSING SAME ON THE GROUND THAT THE CLAIMS THEREIN ARE PROCEDURALLY DEFAULTED; PETITIONER'S MOTIONS AT DOC. #2, #8, #11, #21 AND #22 DEEMED MOOT; ANTICIPATED REQUEST FOR CERTIFICATE OF APPEALABILITY AND FOR LEAVE TO APPEAL *IN FORMA PAUPERIS* DENIED; TERMINATION ENTRY

Pursuant to the reasoning and citations of authority set forth in the Report and Recommendations of the United States Magistrate Judge, and the Order accompanying same (Doc. #23), as well as upon a thorough *de novo* review of this Court's file and the applicable law, said Report and Recommendations and Order are adopted in their entirety. The Petitioner's Objections to said judicial filing (Doc. #25) are overruled.

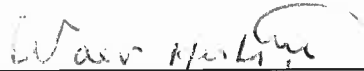
Judgment will be ordered entered in favor of the Respondent and against Petitioner herein, denying Petitioner's Petition for Writ of Habeas Corpus (Doc. #1) as procedurally defaulted.

The following Motions are deemed to be moot and will, therefore, not be ruled upon:

1. Petitioner's Motion for an Evidentiary Hearing is DENIED as MOOT;
2. Petitioner's Motion to Stay the Proceedings (Doc. #2) is DENIED as MOOT;
3. Petitioner's Motion to Amend the Habeas Petition Once the State Claims are Exhausted (Doc. #2) is DENIED as MOOT;
4. Petitioner's Motion for Leave to File Supplemental Error #1 (Doc. #8) is DENIED as MOOT;
5. Petitioner's Motion Requesting Discovery Pursuant to Rule 6(a) (Doc. #11) is DENIED as MOOT;
6. Petitioner's Motion to Expand the Record Pursuant to Rule 7(a) (Doc. #21) is DENIED as MOOT;
7. Petitioner's Motion to Amend/Correct (Doc. #22) is DENIED as MOOT;

Given that Petitioner has failed to make a showing of a substantial denial of a constitutional right and, further, that jurists of reason would not disagree with this Court's decision rendered herein, the Petitioner's request for a certificate of appealability is overruled. Further, given that any appeal from this Court's decision would be objectively frivolous, this Court denies Petitioner the right to appeal *in forma pauperis*.

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.



WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

September 15, 2011

Copies to:

Virgil T. Smith, *Pro Se*
Diane Duemmel Mallory, Esq.
Thelma Thomas Price, Esq.