

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

ARNULFO CARATACHEA,	:	
	:	
Petitioner,	:	Case No. 3:10-cv-464
	:	
vs.	:	JUDGE WALTER HERBERT RICE
	:	
WARDEN, NOBLE CORRECTIONAL INSTITUTION	:	
	:	
Respondent.	:	

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS OF THE MAGISTRATE JUDGE (DOC. #2) IN ITS ENTIRETY, AND OVERRULING PETITIONER'S OBJECTIONS THERETO (DOC. #3); JUDGMENT TO ENTER IN FAVOR OF RESPONDENT AND AGAINST PETITIONER; ANTICIPATED REQUEST FOR CERTIFICATE OF APPEALABILITY AND REQUEST 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 (Doc. #2), as well as upon a thorough *de novo* review of this Court's file, said judicial filing is adopted in its entirety.

Petitioner's only objection is that the Magistrate Judge allegedly erred in her understanding that Petitioner had an interpreter at all crucial stages of the criminal proceedings. According to Petitioner, "the interpreter was only present at the sentencing stage and not the reading of the charges, the plea, the bond hearing or any other hearing which could have given me a reasonable propbability [sic] of choosing a jury trial or another plea. . . ." Doc. #3.

Petitioner asserted only two grounds for relief in his habeas petition:

Ground One: Denial of Effective Assistance of Counsel.

Supporting Facts: By pushing me and permitting me to enter a plea and sentence contrary to law which I did not fully understand.

Ground Two: Conviction obtained by counseled plea of guilt which was not made voluntarily with understanding of total outcome.

Supporting Facts: I could not, barely could, understand English nor what counsel plead too [sic] the court which resulted in a 10 year sentence on a plea and no knowledge I would get such time.

Petition, Doc. #1.

Both of these claims relate *only* to the guilty plea and sentencing phase of the criminal proceedings. The Court has obtained the transcript of Petitioner's combined guilty plea and sentencing hearing, held on January 29, 2009, in the Common Pleas Court of Greene County, Ohio, and has verified that a qualified interpreter was indeed present at that hearing. As each court that has reviewed the record has concluded, Petitioner, with the interpreter's assistance, indicated his full understanding and acceptance of the plea agreement.

The question of whether an interpreter was present at earlier criminal proceedings is simply irrelevant to Petitioner's claims as presented to this Court. The Court therefore OVERRULES Petitioner's Objections to the Magistrate Judge's Report and Recommendations, Doc. #3, and ADOPTS the Report and Recommendations in its entirety, Doc. #2. Petitioner's request for an evidentiary

hearing is denied. The Petition is DISMISSED with prejudice on the merits.

Given that Petitioner has failed to set forth the denial of a constitutional right, and that this Court's decision herein would not be debatable among jurists of reason, the Petitioner's anticipated request for a Certificate of Appealability is denied. Moreover, given that any appeal from this decision would be objectively frivolous, the Court denies leave to appeal *in forma pauperis*.

Judgment will be entered in favor of Respondent and against Petitioner herein, denying and dismissing the 28 U.S.C. § 2254 Petition for a Writ of Habeas Corpus. 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.

Date: September 19, 2011



WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Copies to:

Arnulfo Caratachea, *pro se*