

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

MICAH ALAN COX,

Petitioner,

: Case No. 3:13-cv-200

- vs -

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

ROD JOHNSON, WARDEN,
Madison Correctional Institution,

Respondent.

**DECISION AND ORDER DENYING PETITIONER'S MOTION TO
COMPEL**

This habeas corpus case is before the Court on Petitioner's Motion Compel or for an evidentiary hearing (Doc. No. 13).

On August 2, 2013, on Plaintiff's Motion for Discovery, the Court ordered Respondent "to furnish this Court with the original or a certified accurate copy of State's Exhibit #1 and to furnish Petitioner with the same (Order, Doc. No. 7, PageID 167). On August 28, 2013, Respondent filed a Notice the text of which reads:

Pursuant to this Court's Order (Doc. 7) and Local Rules of the Southern District of Ohio, 5.1 (IV)(A)(5), please take notice that Respondent is herewith manually filing the CD audio-recording which was Exhibit 1 from the state court record in State v. Cox, Case No. 2010 CR 0365, Greene County (Ohio) Court of Common Pleas. This exhibit supplements the Answer / Return of Writ as Exhibit 32 to the Return of Writ. Notice of this filing will be served on the parties. Because Petitioner is acting pro se and is incarcerated, and because the CD exhibit implicates security concerns, a copy of the CD (Return of Writ Exhibit 32) will be served on and made available to Petitioner through the Warden's

Office with instructions to allow Petitioner such access to it as is consistent with prison policy, procedure and institutional security.

(Doc. No. 10, PageID 1014.) The attached certificate of service indicates the Petitioner's copy of the audio *CERT. DENIED* was mailed to the Warden of Madison Correctional Institution on August 28, 2103. *Id.* at PageID 1015. The Clerk has docketed receipt of the *CERT. DENIED*, now labeled as Exhibit 32 to the Return of Writ, Doc. No. 11.

Petitioner's instant Motion indicates he has received the Return of Writ with Exhibits 1-31, but not Exhibit 32. However, because the Warden has certified compliance with the Court's Order, the Motion to Compel is DENIED. Petitioner shall make arrangements with the Warden to listen to what is now marked as Exhibit 32. If it is not the same recording he has previously referred to as the audio tape from trial, he may move the Court for further relief.

Petitioner is reminded that his reply to the Return of Writ is required to be filed not later than September 23, 2013.

September 5, 2013.

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