

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

MICHAEL HAZEL,

Petitioner,

: Case No. 3:13-cv-332

- vs -

District Judge Timothy S. Black
Magistrate Judge Michael R. Merz

WARDEN, Chillicothe
Correctional Institution,

:

Respondent.

**DECISION AND ORDER OVERRULING PETITIONER'S
OBJECTION TO RESPONDENT'S NOTICE OF FILING**

This habeas corpus case is before the Court on Petitioner's Objection¹ (Doc. No. 37) to Respondent's Notice of Filing (Doc. No. 33).

On July 31, 2014, on Petitioner's Motion, the Court ordered Respondent to expand the record, stating:

The other four items Hazel seeks in discovery are the bills of particulars in Clark County Common Pleas Case Nos. 03-CR-592, 09-CR-212, 10-CR-808, and 11-CR-49 (Motion, Doc. No. 26, PageID 2707). Rather than grant Hazel discovery of these items, the Court finds that they are or may be relevant to a decision in this case and therefore ORDERS the Respondent to expand the record by filing copies of these four items not later than August 11, 2014.

(Decision and Order, Doc. No. 32, PageID 2770.)

In response, the Warden's counsel wrote that no bills of particular were filed in Case

¹ The document is not an objection in the sense of a request for review by a District Judge of a Magistrate Judge's order or report under Fed. R. Civ. P. 72. Instead, it is a complaint about the failure, as Hazel sees it, of the Warden to comply with a court order. As such, the Objection is properly dealt with by a Magistrate Judge.

Nos. 03-CR-592, 09-CR-212, 10-CR-808, and 11-CR-49 (Response to Court's Order, Doc. No. 34, PageID 2801-02). Docket sheets were attached to prove that no such bills of particulars had been filed in those cases. Respondent noted that Case Nos. 10-CR-827 and 10-CR-828 had been consolidated with 10-CR-808 and the four bills of particulars in the consolidated cases were filed.

Hazel objects that the Respondent did not file what the Court ordered and now should be compelled to do so. Hazel misunderstands this Court's authority. We have no power at this juncture to order the State, and particularly the Clark County Prosecutor, to create documents that never existed in the past. Ohio R. Crim. P. 7(E) provides for the prosecuting attorney to furnish a defendant with a bill of particulars when a defendant makes a written request "within twenty-one days after arraignment but not later than seven days before trial." If no request was made within that time, a defendant has forfeited his or her right to obtain a bill of particulars. Respondent has provided definitive proof from the dockets that no bills of particulars meeting the description Hazel has furnished were ever filed in those cases.

Petitioner's Objection is OVERRULED.

August 19, 2014.

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