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

DAMIEN D. BROWN,

Petitioner,

v.

WARDEN, WARREN CORRECTIONAL INSTITUTION,

Respondent.

Case No. 3:14-cv-36

JUDGE WALTER H. RICE

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #2) AND SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. #7); OVERRULING PETITIONER'S OBJECTIONS THERETO (DOCS. ##4, 9); DISMISSING WITH PREJUDICE PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS (DOC. #1); JUDGMENT TO ENTER IN FAVOR OF RESPONDENT AND AGAINST PETITIONER; DENYING CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL *IN FORMA PAUPERIS*; TERMINATION ENTRY

On February 5, 2014, United States Magistrate Judge Michael Merz issued a Report and Recommendations, Doc. #2, recommending that the Petition for Writ of Habeas Corpus, Doc. #1, be dismissed with prejudice. Petitioner filed Objections to the Report and Recommendations, Doc. #4, and the Court recommitted the case to the Magistrate Judge. On April 28, 2014, Magistrate Judge Merz filed a Supplemental Report and Recommendations, Doc. #7, again recommending that the Petition be dismissed with prejudice. Petitioner also filed Objections to the Supplemental Report and Recommendations, Doc. #9.

Based on the reasoning and citations of authority set forth by United States Magistrate Judge Michael R. Merz, in his February 5, 2014, Report and Recommendations, Doc. #2, and his April 28, 2014, Supplemental Report and Recommendations, Doc. #7, as well as upon a thorough *de novo* review of this Court's file and the applicable law, this Court ADOPTS said judicial filings in their entirety, and OVERRULES Petitioner's Objections thereto, Docs. ##4, 9.

Citing *Dixon v. Hardy*, No. 10C06727, 2013 U.S. Dist. LEXIS 144268, at *15 n.3 (N.D. Ill. Oct. 4, 2013), Petitioner notes that not all federal courts require a cumulative error claim to be presented to the state courts as a stand-alone claim in order to be deemed properly exhausted. However, the Sixth Circuit does so require. *See Abdur'Rahman v. Colson*, 649 F.3d 468, 472 (6th Cir. 2011) ("cumulative error arguments must be raised separately in the state court and are subject to procedural default on habeas review."). Although the Court understands Petitioner's frustrations with trying to navigate difficult habeas corpus procedures, this Court must follow the law. Because Petitioner failed to present his cumulative error claim to the state courts, this Court may not consider it.

For the reasons set forth by the Magistrate Judge, not only are Petitioner's two grounds for relief procedurally defaulted, but they also fail on the merits. Accordingly, the Petition for a Writ of Habeas Corpus, Doc. #1, is DISMISSED WITH PREJUDICE.

Given that Petitioner has not made a substantial showing of the denial of a constitutional right and, further, that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's decision would be objectively frivolous, Petitioner is denied a certificate of appealability, and is denied leave to appeal *in forma pauperis*.

Judgment will be entered in favor of Respondent and against Petitioner.

The captioned case 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 29, 2014

WALTER H. RICE
UNITED STATES DISTRICT JUDGE