

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

JAMES H. CLAY,	:	
Petitioner,	:	
v.	:	Case No. 3:14-cv-319
CHARLOTTE JENKINS, WARDEN,	:	JUDGE WALTER H. RICE
Respondent.	:	

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #10) AND SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. #14); OVERRULING PETITIONER'S OBJECTIONS THERETO (DOCS. ##12, 15); DISMISSING PETITION FOR WRIT OF HABEAS CORPUS (DOC. #1) WITH PREJUDICE; JUDGMENT TO ENTER IN FAVOR OF RESPONDENT AND AGAINST PETITIONER; DENYING CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL *IN FORMA PAUPERIS*; TERMINATION ENTRY

Based on the reasoning and citations of authority set forth by Magistrate Judge Michael R. Merz in his February 11, 2015, Report and Recommendations, Doc. #10, and his April 17, 2015, Supplemental Report and Recommendations, Doc. #14, as well as on a thorough *de novo* review of this Court's file and the applicable law, the Court ADOPTS said judicial filings in their entirety.

Petitioner's Objections thereto, Docs. ##12 and 15, are OVERRULED. As Magistrate Judge Merz correctly noted, Petitioner's "actual innocence" claim is not

cognizable as an independent claim in habeas corpus, and the State's alleged sentencing error does not rise to the level of a constitutional violation.

The Petition for Writ of Habeas Corpus, Doc. #1, is DISMISSED WITH PREJUDICE. Judgment shall be entered in favor of Respondent and against Petitioner.

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*.

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: May 5, 2015



WALTER H. RICE
UNITED STATES DISTRICT JUDGE