

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

DERRICK L. JOHNSON,

Petitioner,

: Case No. 3:15-cv-090

- vs -

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

CHARLES BRADLEY¹, Warden,
Pickaway Correctional Institution,

:

Respondent.

DECISION AND ORDER DENYING MOTION TO COMPEL

This habeas corpus case is before the Court on Petitioner's Motion to Compel the Clerk to serve him with a copy of the Magistrate Judge's Report and Recommendations of September 28, 2017 (ECF No. 38). Petitioner's purpose is "to allow petitioner to file objections thereto, as petitioner has NOT been served with such to date." *Id.* at PageID 967.

The question that presents itself is how Petitioner knows that there exists a September 8, 2017, Report and Recommendations. On October 2, 2017, Judge Rice adopted the Report and entered judgment (ECF Nos. 36, 37). The docket entry shows the Clerk sent both of those items to Mr. Johnson, but they could not have arrived until after October 2. Petitioner cannot have learned of that Decision by the time he sent his Motion to Compel, which he says he served on the Attorney General on September 28, 2017 (Certificate of Service, ECF No. 38 at PageID 968).

¹ Mr. Bradley is the current Warden at Petitioner's place of confinement and is therefore substituted as Respondent in this case; the caption is amended as set forth above. Fed. R. Civ. P. 25.

Because the Clerk's Office says it mailed the Report and Recommendations, the Decision and Entry, and the Judgment by ordinary mail to Mr. Johnson and the docket does not reflect any return of that mail, the Motion to Compel is DENIED. As a matter of courtesy, the Clerk will furnish Mr. Johnson with a copy of the Report and Recommendations without charge.

Because judgment has already been entered in the case, Mr. Johnson cannot now file objections. He can, however, file a motion to amend the judgment under Fed. R. Civ. P. 59(3) not later than twenty-eight days after the judgment (October 30, 2017). The Court is without authority to extend that time.

October 5, 2017,

s/ Michael R. Merz
United States Magistrate Judge