

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

LARRY BAKER,

Petitioner,

: Case No. 3:15-cv-414

- vs -

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

WARDEN,

Noble Correctional Institution,

:

Respondent.

**DECISION AND ORDER ON PETITIONER'S SECOND MOTION
FOR DISCOVERY**

This habeas corpus case is before the Court on Petitioner's second Motion for Discovery in which he seeks an order to have the trial transcripts filed with the Court (ECF No. 8).

Examination of the State Court Record filed by Respondent (ECF No. 3) shows that it does not include the trial transcript. Nor does the Return of Writ respond completely to the Court's Order for Answer which required Respondent to file an answer "conforming to the requirements of Rule 5 of the Rules Governing § 2254 Cases (ECF No. 2, PageID 31). Rule 5(c) provides in pertinent part:

(c) **Contents: Transcripts.** The answer must also indicate what transcripts (of pretrial, trial, sentencing, or post-conviction proceedings) are available, when they can be furnished, and what proceedings have been recorded but not transcribed. The respondent must attach to the answer parts of the transcript that the respondent considers relevant. The judge may order that the respondent furnish other parts of existing transcripts or that parts of untranscribed recordings be transcribed and furnished.

Because the case was tried and appealed and there are references to hearing transcripts in the appellate record, the Court assumes a full transcription has been made of trial court proceedings. Because Petitioner has pleaded as his First Ground for Relief that he was convicted on insufficient evidence, this Court must review the entire record.

Therefore, Respondent is ORDERED to file a complete trial court transcript in this Court not later than February 22, 2016.

February 9, 2016.

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