

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

MARVIN GAY,	:	
Petitioner,	:	
v.	:	Case No. 3:16-cv-333
BRYAN COOK, Warden,	:	JUDGE WALTER H. RICE
Respondent.	:	

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DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #4);  
DISMISSING PETITION UNDER 28 U.S.C. § 2254 (DOC. #1)  
WITHOUT PREJUDICE FOR LACK OF PROSECUTION; JUDGMENT TO  
BE ENTERED IN FAVOR OF RESPONDENT AND AGAINST  
PETITIONER; DENYING CERTIFICATE OF APPEALABILITY AND LEAVE  
TO PROCEED *IN FORMA PAUPERIS*; TERMINATION ENTRY

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Based on the reasoning set forth by United States Magistrate Judge Michael R. Merz, in his Report and Recommendations, Doc. #4, as well as on a thorough *de novo* review of this Court's file and the applicable law, the Court ADOPTS said judicial filing in its entirety, and DISMISSES WITHOUT PREJUDICE the Petition Under 28 U.S.C. § 2254, Doc. #1, for lack of prosecution.

Although Petitioner was twice mailed a copy of the Report and Recommendations, notifying him of his right to file Objections, and of the consequences of failing to do so, that mail has been returned as undeliverable. Petitioner has an obligation to keep the Court informed of any changes to his

mailing address. As Magistrate Judge Merz noted, Petitioner was serving a seven-month sentence, which would have expired by now. The Court therefore assumes that Petitioner has abandoned this challenge to his conviction.

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

Given 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 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: January 9, 2017

  
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WALTER H. RICE  
UNITED STATES DISTRICT JUDGE