

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

Anson J. Matthews,

Plaintiff,

v.

Case No. 3:16-cv-381
Judge Thomas M. Rose

Rhonda Richard, Warden, Madison Correctional
Institution,

Defendant.

DECISION AND ENTRY ADOPTING SECOND SUPPLEMENTAL REPORT AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE MERZ (DOC. 12), AMENDED SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. 9), SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. 6), AND REPORT AND RECOMMENDATIONS (DOC. 3), AND OVERRULING PETITIONER'S OBJECTIONS TO SECOND SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. 16), PETITIONER'S OBJECTIONS TO AMENDED SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. 13), PETITIONER'S OBJECTIONS TO SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. 10), AND PETITIONER'S OBJECTIONS TO REPORT AND RECOMMENDATIONS (DOC. 7), THE MAGISTRATE'S PROPOSED FINDINGS AND RECOMMENDATIONS, (DOC. 16), DENYING PETITION FOR WRIT OF HABEAS CORPUS, (DOC. 1), AND TERMINATING THE INSTANT CASE.

Pending before the Court are Petitioner's Objections to Second Supplemental Report and Recommendations (Doc. 16), Petitioner's Objections to Amended Supplemental Report and Recommendations (Doc. 13), Petitioner's Objections to Supplemental Report and Recommendations (Doc. 10), and Objection to Magistrate's Report and Recommendations. (Doc. 7).

Magistrate Judge Michael R. Merz's Report and Recommendations (Doc. 3), Supplemental Report and Recommendations (Doc. 6), Amended Supplemental Report and Recommendations (Doc. 9), and Second Supplemental Report and Recommendations (Doc. 12), all recommend denying Petitioner's Petition for Writ of Habeas Corpus, (Doc. 1), and denying permission to proceed *in forma pauperis*. The Magistrate concludes that Petitioner has procedurally defaulted his claim of ineffective assistance of appellate counsel by not presenting it in an application to reopen Petitioner's direct appeal pursuant to Ohio Rule of Appellate Procedure 26(B). Petitioner claims to have preserved this claim by asserting it in his appeal to the Ohio Supreme Court, which declined to accept jurisdiction.

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a *de novo* review of the record in this case. Upon said review, the Court finds that Petitioner's objections, (Docs. 7, 10, 13 and 16), to the Magistrate Judge's Report and Recommendations, (Docs. 3, 6, 9, and 12), are not well taken and they are hereby **OVERRULED**. The Magistrate Judge's Report and Recommendations, (Docs. 3, 6, 9, and 12), are **ADOPTED**. Wherefore, the Court **DISMISSES** the Petition (Doc. 1) **WITH PREJUDICE**. Because reasonable jurists would not disagree with this conclusion, Petitioner is denied a certificate of appealability and the Court certifies to the Sixth Circuit that any appeal would be objectively frivolous and therefore Petitioner should not be permitted to proceed *in forma pauperis*. The Clerk is **ORDERED** to terminate the instant case.

DONE and **ORDERED** this Tuesday, November 29, 2016.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE