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

DUSTIN GLENN,

Petitioner, : Case No. 3:17-cv-435

- vs - District Judge Walter H. Rice
Magistrate Judge Michael R. Merz

PREBLE COUNTY SHERIFF DEPARTMENT AND STATE OF OHIO

:

Respondent.

ORDER WITHDRAWING REPORTS AND RECOMMENDATIONS AND ORDERING ANSWER; DECISION AND ORDER ON MISCELLANEOUS MOTIONS

This habeas corpus case is before the Court on Petitioner's Partial Objections (ECF No. 21) to the Magistrate Judge's Second Supplemental Report and Recommendations recommending the Petition be dismissed (ECF No. 16). It is also before the Court on Petitioner's Motion for Issuance of Subpoena (ECF No. 19), Notice of Correspondence (ECF No. 20), and Motion to Take Judicial Notice (ECF No. 22).

Petitioner's recent filings make it seem unlikely to the Magistrate Judge that yet a third supplemental report would be useful. Instead, in the interest of being able to provide the District Judge with a comprehensive report, the prior Reports and Recommendations (ECF Nos. 4, 13, and 16) are WITHDRAWN.

It further appears to the Magistrate Judge to be imprudent to attempt to decide the case without having the state court record before this Court. Accordingly, it is hereby ORDERED that Respondent shall, not later than May 15, 2018, file an answer conforming to the requirements of Rule 5 of the Rules Governing §2254 Cases. Specifically, said answer shall respond to each allegation made in the Petition, comply with Rule 5(c) regarding transcripts, raise any affirmative defense relied on by Respondent, and state whether, from Respondent's perspective, any claim in the Petition is barred by a failure to exhaust state remedies, a procedural bar, non-retroactivity, or a statute of limitations.

Before filing the answer, the Respondent shall file those portions of the state court record needed to adjudicate this case. When the record is filed electronically, the Court's CM/ECF filing system will affix a unique PageID number to each page of the record, displayed in the upper right-hand corner of the page. All papers filed in the case thereafter by either party shall include record references to the PageID number. Prior to filing the state court record, the Warden's counsel shall ensure that any borders on parts of the record (typically, court reporter transcripts) do not obscure the PageID number when the page is filed. The record shall be indexed by insertion of "bookmarks" in the .pdf version of the state court record uploaded to the Court's CM/ECF system which display each exhibit and the name of that exhibit in the record.

As required by Fed. R. Civ. P. 5, a complete copy of the answer and state court record with the PageID numbers and "bookmarks" must be served on Petitioner at the time of filing.

Petitioner may, not later than twenty-one days after the answer is filed, file and serve a reply to the answer.

The Clerk is ordered to serve the Petition on Respondent and the Attorney General of Ohio, Habeas Corpus Unit of the Corrections Litigation Section c/o

Brian.Higgins@ohioattorneygeneral.gov and Habeas.docketclerk@ohioattorneygeneral.gov.

The Magistrate Judge understands from Petitioner's filings that the Probate Court of Preble County has appointed attorney Jacob Kovach as guardian of the estate of Petitioner. The Clerk will serve a copy of this Order on Mr. Kovach at his offices at 115 West Main Street, Eaton, Ohio, and add him as an interested party to this case so that he receives notice of activity in the case. Mr. Kovach is invited to advise this Court of any facts within his knowledge as guardian which have a bearing on this case.

Petitioner's Motion for Issuance of a Subpoena for his Preble County Probate Court file (ECF No. 19) is DENIED without prejudice to any possible later expansion of the record with relevant material from that file.

Petitioner's Partial Objection (ECF No. 21) is found to be moot, given the withdrawal of the Report to which it objects.

Glen also asks this Court to take judicial notice of *Glenn v. Commr. of Social Security*, 2012 U.S. Dist. LEXIS 155289 (S.D. Ohio Oct. 30, 2012). Because the reported opinion is a decision of a judge of this Court, it is appropriate for judicial notice and the Motion (ECF No. 22) is GRANTED. However, it is completely unclear to the undersigned what relevance Judge Black's decision has to the issue of tolling in this case.

March 20, 2018.

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