

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

TORACE D. WEAVER,	:	
Petitioner,	:	
v.	:	Case No. 3:18-cv-393
TIM SHOOP, Warden, Chillicothe	:	JUDGE WALTER H. RICE
Correctional Institution,	:	
Respondent.	:	

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE
JUDGE’S REPORT AND RECOMMENDATIONS (DOC. #13);
OVERRULING PETITIONER’S OBJECTION THERETO (DOC. #14);
OVERRULING PETITIONER’S MOTION TO ALTER OR AMEND
JUDGMENT (DOC. #12); CASE TO REMAIN TERMINATED

Following the death of his two-year-old foster son, Petitioner, Torace Weaver, was convicted of murder, endangering children and obstructing official business. On March 3, 2019, the Court issued a Decision and Entry Adopting United States Magistrate Judge Michael R. Merz’s Report and Recommendations, Doc. #2, and Dismissing Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus, Doc. #1. Doc. #9. Judgment was entered on March 5, 2019. Doc. #11.

On March 15, 2019, Petitioner filed a Motion to Alter or Amend Judgment, Doc. #12, in order to prevent manifest injustice. He argues that the law and the facts do not support his convictions. On March 18, 2019, Magistrate Judge Merz

issued a Report and Recommendations, Doc. #13, recommending that the Court overrule Petitioner's Motion to Alter or Amend Judgment.

With respect to the sufficiency-of-the-evidence claim, Magistrate Judge Merz found that Petitioner had not satisfied his burden of rebutting the factual findings of the Second District Court of Appeals by clear and convincing evidence. Magistrate Judge Merz noted that Petitioner was alone with the child when the death occurred, and that Petitioner had given inconsistent explanations of what had happened. A forensic pathologist noted at least 20 previous head traumas, some of which could have been produced by the impact of knuckles. In addition, witnesses testified that the child was in good physical condition prior to this foster placement.

Magistrate Judge Merz correctly noted that, when a petitioner challenges the sufficiency of the evidence, a federal court must defer both to the jury's finding and to the finding of the appellate court that the evidence was sufficient to support the conviction. *Brown v. Konteh*, 567 F.3d 191, 205 (6th Cir. 2009). Although Petitioner disagrees with those factual findings, he failed to show clear error of law or manifest injustice resulting from this Court's dismissal of his Petition. Doc. #13.


Petitioner has filed timely Objections to the Report and Recommendations. Doc. #14. He maintains that the victim's three-year-old brother, who has a documented history of abusive behavior, is responsible for the victim's previous head traumas which "exacerbated the accident that caused his unintentional

death." *Id.* at PageID#63. Nevertheless, Petitioner still has not shown that no "rational trier of fact could have found him guilty after resolving all disputes in favor of the prosecution." *Brown*, 567 F.3d at 205. Nor has he shown that the state appellate court's decision on the sufficiency of the evidence was "unreasonable." *Id.* He has established no legal basis for altering or amending this Court's decision dismissing his Petition.

Based on the citations of authority set forth by Magistrate Judge Merz in his Report and Recommendations, Doc. #13, as well as upon a thorough *de novo* review of this Court's file and the applicable law, the Court ADOPTS said judicial filing, Doc. #13, and OVERRULES Petitioner's Objections thereto, Doc. #14. Petitioner's Motion to Alter or Amend Judgment, Doc. #12, is OVERRULED.

The above-captioned case shall remain terminated on the Court's docket.

Date: April 3, 2019



WALTER H. RICE
UNITED STATES DISTRICT JUDGE