

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

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|---------------------------|---|----------------------|
| DEONTE SNOWDEN,           | : |                      |
|                           | : |                      |
| Petitioner,               | : |                      |
|                           | : |                      |
| v.                        | : | Case No. 3:20-cv-463 |
|                           | : |                      |
| ED SHELDON, Warden, Allen | : | JUDGE WALTER H. RICE |
| Correctional Institution, | : |                      |
|                           | : |                      |
| Respondent.               | : |                      |

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DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #18); OVERRULING PETITIONER'S OBJECTIONS THERETO (DOC. #21); OVERRULING PETITIONER'S REQUEST FOR RECONSIDERATION AND OBJECTION TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION AND MOTION TO AMEND (DOC. #17); DENYING CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL *IN FORMA PAUPERIS*; JUDGMENT TO ENTER IN FAVOR OF RESPONDENT AND AGAINST PETITIONER; CASE TO REMAIN TERMINATED ON DOCKET

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On November 18, 2020, United States Magistrate Judge Michael R. Merz issued a Report and Recommendations, recommending that the Petition for Writ of Habeas Corpus be dismissed with prejudice. He recommended dismissal of Grounds One and Two of the Petition based on *Stone v. Powell*, 428 U.S. 465 (1976), and recommended dismissal of Ground Three because the state appellate court's decision was not an objectively unreasonable application of *Strickland v. Washington*, 466 U.S. 668 (1984). Doc. #2. When no Objections were filed, the

Court adopted the Report and Recommendations, Doc. #3, and entered Judgment, Doc. #4.

Petitioner then asked for an extension of time to file Objections. Doc. #5. The Court denied that motion, but informed Petitioner of his right to place the substance of those Objections before the Court by filing a timely motion to amend the judgment or motion for relief from judgment. Doc. #6. Thereafter, Petitioner filed a Motion to Amend and/or Make Additional Findings. Therein, he asked for an extension of time to file Objections, claiming that he had not received a copy of the Report and Recommendations. Doc. #7. The Clerk of Court sent him another copy by certified mail, and the Court gave him an extension of time to file Objections. Doc. #8.

On February 22, 2021, Petitioner filed his Objections to the Report and Recommendations. Doc. #12. On February 24, 2021, United States Magistrate Judge Michael R. Merz issued a Report and Recommendations on Petitioner's Motion to Amend or Make Additional Findings. Doc. #13. Therein, he found that Petitioner had failed to show that he was entitled to relief under Fed. R. Civ. P. 59(e), in that he had not demonstrated a clear error of law in the Decision and Entry adopting the prior Report and Recommendations, Docs. ##2 and 3. He therefore recommended that the Court overrule the Motion to Amend, and deny a certificate of appealability and leave to appeal *in forma pauperis*.

On April 21, 2021, the Court issued a Decision and Entry adopting Magistrate Judge Michael Merz's Report and Recommendations and Overruling

Petitioner's Motion to Amend or Make Additional Findings. Doc. #16. The Court noted that although Petitioner Snowden had sought and been granted an extension of time to file Objections to that Report and Recommendations, no Objections had been filed.

On May 17, 2021, Petitioner filed a Request for Reconsideration and Objection to Magistrate's Report and Recommendation and Motion to Amend. Doc. #17. Therein, he asks the Court to reconsider its April 21, 2021, Decision and Entry. He claims that he never received the Court's Order granting his request for an extension of time to file Objections to the Report and Recommendations, and that he was awaiting the Court's decision prior to requesting access to the institutional law library. Petitioner then set forth his belated substantive Objections to that judicial filing.<sup>1</sup>

On May 18, 2021, Magistrate Judge Merz issued a Report and Recommendations on Motion to Amend Judgment Denying Prior Motion to Amend, Doc. #18. He explained why Petitioner's latest Motion to Amend was procedurally improper. "If a court reconsidered the merits of the underlying judgment on a motion under either 52(b) or 59(e) when the motion was made in supposed reference to a decision denying a prior Rule 59(e) motion, it would essentially read

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<sup>1</sup> Petitioner has also filed a Notice of Appeal from the Court's April 21, 2021, Decision and Entry. Doc. #19. The Sixth Circuit Court of Appeals has held this in abeyance pending resolution of the motion for reconsideration. *See* Doc. #20.

out of the Rules the twenty-eight day time limit and deprive the opposing party of the finality to which the Rules entitle it.” *Id.* at PageID##85-86.

As Magistrate Judge Merz explained, on a motion to amend under Fed. R. Civ. P. 59(e), the relevant question is whether there is a clear error of law, newly discovered evidence, an intervening change in controlling law or a need to prevent manifest injustice. *Betts v. Costco Wholesale Corp.*, 558 F.3d 461, 474 (6th Cir. 2009). He noted that Petitioner’s arguments were all directed to the *original* judgment, Doc. #3, and that Petitioner had made *no claim that the order denying his prior motion to amend*, Doc. #16, was based on a manifest error of law. Doc. #18, PageID#86. He therefore recommended that the Court overrule the Request for Reconsideration.

This matter is currently before the Court on Petitioner’s Objections to that Report and Recommendations, Doc. #21. The Court must make a *de novo* review of those portions of the Report and Recommendations to which proper Objections have been filed. Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1).

The relevant question, at this stage of the litigation, is whether the Court committed a clear error of law on April 21, 2021, when it adopted the Report and Recommendations on Motion to Amend, Doc. #13, and overruled Petitioner’s Motion to Amend or Make Additional Findings, Doc. #7. *See* Doc. #16. Based on the reasoning and citations of authority set forth by Magistrate Judge Merz in his Report and Recommendations, Doc. #18, as well as upon a thorough *de novo*

review of this Court's file and the applicable law, the Court ADOPTS said judicial filing in its entirety, and OVERRULES Petitioner's Objections thereto, Doc. #21.

In short, Petitioner has failed to show that he is entitled to relief under Fed. R. Civ. P. 59(e). Petitioner's Request for Reconsideration and Objection to Magistrate's Report and Recommendation and Motion to Amend, Doc. #17, is therefore OVERRULED.

Given that Petitioner has not made a substantial showing of the denial of a constitutional right and, further, 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 is denied leave to appeal *in forma pauperis*.

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

The captioned case shall remain terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton. The Clerk is directed to send a copy of this Decision and Entry to Mr. Snowden *via certified mail*, and to Case Manager Sharday Swain at the Sixth Circuit Court of Appeals (re: Case No. 21-3493).

Date: June 16, 2021



(tp - per Judge Rice authorization  
after his review)

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WALTER H. RICE  
UNITED STATES DISTRICT JUDGE