

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Damon Peterson,)	CASE NO. 1:16 CV 509
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
Vs.)	
)	
Michelle Miller, Warden,)	<u>Memorandum of Opinion and Order</u>
)	
)	
Respondent.)	

INTRODUCTION

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Jonathan D. Greenberg (Doc. 17), which recommends dismissal of the Petition for Writ of Habeas Corpus pending before the Court. The Report and Recommendation was filed on December 7, 2017. Petitioner has not filed objections. For the reasons that follow, the Report and Recommendation is ACCEPTED.

STANDARD OF REVIEW

When objections are made to a magistrate judge's report and recommendation, the district court reviews the case *de novo*. Federal Rule of Civil Procedure 72(b) provides in

pertinent part:

The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

As stated in the Advisory Committee Notes, "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." In *Thomas v. Arn*, 474 U.S. 140, 150 (1985), the Court held, "It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."

DECISION

Petitioner brought ten grounds for relief in his petition. Magistrate Judge Greenberg concluded that his first and third through tenth grounds for relief are procedurally defaulted because he did not fairly present them to the Ohio Supreme Court on direct review. He further concluded that Petitioner did not establish cause or prejudice to excuse the procedural default or that he is actually innocent. Magistrate Judge Greenberg found that Petitioner fairly presented his second ground for relief (sufficiency of the evidence) to the Ohio Supreme Court. But he concluded that the claim fails because Petitioner did not demonstrate that the state appellate court's decision rejecting the claim is based on an unreasonable determination of the facts or contravenes or unreasonably applies clearly established federal law as determined by the Supreme Court.

This Court, having reviewed the Report and Recommendation and finding no clear error, accepts the Magistrate Judge's Report and Recommendation. In accordance with that recommendation, the Court hereby denies the Petition for Writ of Habeas Corpus for the reasons stated by the Magistrate Judge in the Report and Recommendation, which is incorporated herein by reference. Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Court
Chief Judge

Dated: 1/16/18