

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

CHAUNCEY YARBROUGH,

Petitioner,

: Case No. 1:13-cv-443

- vs -

District Judge Michael R. Barrett
Magistrate Judge Michael R. Merz

ERNIE MOORE, Warden,
Lebanon Correctional Institution,

:

Respondent.

**REPORT AND RECOMMENDATIONS ON MOTION FOR LEAVE
TO APPEAL *IN FORMA PAUPERIS***

This habeas corpus case is before the Court on Petitioner’s Motion for Leave to Appeal *in forma pauperis* (ECF No. 24). Yarbrough has appealed from this Court’s denial of his Motion for Relief from Judgment and purportedly from denial of his Petition for Writ of Habeas Corpus (Notice of Appeal, ECF No. 22).

Yarbrough is unable to appeal on the merits of his habeas petition. The Court dismissed the Petition October 10, 2014 (ECF No. 13) and the combined Notice of Appeal was not filed until September 22, 2016, almost two years later and well beyond the deadline for taking such an appeal. The right to appeal from a judgment is not revived by filing a motion for relief from judgment.

Yarbrough’s Notice of Appeal is timely as regards denial of his Motion for Relief from Judgment, but the Court should deny him leave to appeal *in forma pauperis* and should certify to

the Court of Appeals that the appeal is not taken in good faith. As noted in the Report and Recommendations on the Rule 60(b) Motion (ECF No. 19), Yarbrough waited almost a year to file that motion and did virtually nothing to establish his right to that relief.

November 11, 2016.

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

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).