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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

HAKEEM SULTAANA,	)	CASE NO. 1:16 CV 2884
	)	
Petitioner,	)	JUDGE DAN AARON POLSTER
	)	
v.	)	MAGISTRATE JUDGE
	)	WILLIAM H. BAUGHMAN, JR.
BRIGHAM SLOAN, <i>et al.</i> ,	)	
	)	
Respondents.	)	<b><u>REPORT AND RECOMMENDATION</u></b>

**Introduction**

Before me by referral<sup>1</sup> in Hakeem Sultaana's *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254<sup>2</sup> is a motion to dismiss the petition filed by the State,<sup>3</sup> which Sultaana has opposed<sup>4</sup> and to which the State has replied.<sup>5</sup> In addition, Sultaana has filed a motion for partial summary judgment<sup>6</sup> to which the State has responded by moving to stay consideration of that motion until after adjudicating its own motion to dismiss.<sup>7</sup>

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<sup>1</sup>This matter was referred to me under Local Rule 72.2 by United States District Judge Dan Aaron Polster in a non-document order entered on December 28, 2016.

<sup>2</sup>ECF # 1.

<sup>3</sup>ECF # 130.

<sup>4</sup>ECF # 132.

<sup>5</sup>ECF # 159.

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<sup>7</sup>ECF # 173.

Sultaana has opposed that motion.<sup>8</sup>

Sultaana is currently incarcerated at the Warren Correctional Institution<sup>9</sup> where he is serving an aggregate sentence of 14 years in prison imposed in 2014 by the Cuyahoga County Common Pleas Court following Sultaana's conviction at a jury trial of various offenses related to his participation in a car title flipping scheme.<sup>10</sup>

In its motion to dismiss, the State argues that all of Sultaana's grounds for federal habeas relief are procedurally defaulted and/or non-cognizable. For the reasons that follow, I will recommend granting the State's motion to dismiss and thus further recommend dismissing the entire petition with prejudice. In that regard, I recommend that Sultaana's motion for partial summary judgment be denied.<sup>11</sup>

#### Facts

For purposes of the deciding the State's motion, I here incorporate by reference the complete statement of underlying facts as set forth by Magistrate Judge White in his Report and Recommendation recommending granting the State's prior motion to dismiss for failure to exhaust in a prior case.<sup>12</sup>

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<sup>8</sup>ECF # 174.

<sup>9</sup>See, [drc.ohio.gov/offendersearch](http://drc.ohio.gov/offendersearch). I note that Sultaana was incarcerated at the Lake Erie Correctional Institution at the time his petition was filed.

<sup>10</sup>See, ECF # 130 at 6-7 (citing record).

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<sup>12</sup>See, 1:15-cv-01963, ECF # 45.

As regards the present petition,<sup>13</sup> Sultanna claims some twenty-three grounds for habeas relief.<sup>14</sup> Subsequent to lengthy proceedings, the State, as noted, has moved to dismiss all grounds asserted in the petition as procedurally defaulted and/or non-cognizable.<sup>15</sup>

### Analysis

#### A. Relevant law - procedural default

A claim not adjudicated on the merits by a state court is not subject to AEDPA review.<sup>16</sup> Such a claim is subject to procedural default if a petitioner failed to raise it when state court remedies were still available, the petitioner violated a state procedural rule.<sup>17</sup> The petitioner must afford the state courts “opportunity to pass upon and correct alleged violations of its prisoners’ federal rights.”<sup>18</sup> This requires a petitioner to go through “one complete round” of the state’s appellate review process,<sup>19</sup> presenting his or

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her claim to “each appropriate state court.”<sup>20</sup> A petitioner may not seek habeas relief then if he or she does not first “fairly present[] the substance of his [or her] federal habeas corpus claim to the state courts.”<sup>21</sup>

When a state asserts that a violation of a state procedural rule is the basis for default in a federal habeas proceeding, the Sixth Circuit has long employed a four-part test to determine whether the claim is procedurally defaulted.<sup>22</sup> A petitioner’s violation of a state procedural rule will bar federal review if the state procedural rule satisfies the standards set out in the test:<sup>23</sup>

(1) “[T]here must be a state procedure in place that the petitioner failed to follow.”<sup>24</sup>

(2) “[T]he state court must have denied consideration of the petitioner’s claim on the ground of the state procedural default.”<sup>25</sup>

(3) “[T]he state procedural rule must be an ‘adequate and independent state

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<sup>20</sup> *Baldwin v. Reese*, 541 U.S. 27, 29 (2004) (emphasis added).

<sup>21</sup> *West*, 790 F.3d at 697 (quoting *Picard v. Connor*, 404 U.S. 270, 278 (1971) (internal quotation marks omitted)).

<sup>22</sup> See *Maupin v. Smith*, 785 F.2d 135 (6th Cir. 1986) (outlining four-part test); see *Landrum v. Mitchell*, 625 F.3d 905, 916-17 (6th Cir. 2010) (applying test post-AEDPA).

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<sup>24</sup> *Id.* (citing *Maupin*, 785 F.2d at 138).

<sup>25</sup> *Id.*

ground,”<sup>26</sup> that is both “firmly established and regularly followed.”<sup>27</sup>

(4) The petitioner cannot demonstrate either “cause for the default and actual prejudice as a result of the alleged violation of federal law,” or “that failure to consider the claims will result in a fundamental miscarriage of justice.”<sup>28</sup>

In order to show “cause” for the default, the petitioner must show that “some objective factor external to the defense impeded counsel’s efforts to comply with the State’s procedural rule.”<sup>29</sup> In order to show “prejudice” for the default, the petitioner must show that the errors at trial “worked to [his or her] *actual* and substantial disadvantage, infecting [the] entire trial with error of constitutional dimensions.”<sup>30</sup>

## **B. Application of relevant law**

### ***1. Ground One***

As the State points out, Sultaana’s first ground for federal habeas relief - that the Ohio Appeals Court violated his rights to substantive and procedural due process, and to equal protection of the law, by denying him leave to re-open his appeal under Ohio Rule

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<sup>26</sup> *Id.* (quoting *Maupin*, 785 F.2d at 138). (“A state procedural rule is an independent ground when it does not rely on federal law.”) (citing *Coleman v. Thompson*, 501 U.S. 722, 732).

<sup>27</sup> *Id.* (citation omitted).

<sup>28</sup> *Id.* (quoting *Coleman*, 501 U.S. at 750).

<sup>29</sup> *Id.* (quoting *Murray v. Carrier*, 477 U.S. 478, 488 (1986)).

<sup>30</sup> *Id.* (quoting *United States v. Frady*, 456 U.S. 152, 170 (1982) (emphasis in original)).

of Appellate Procedure 26(B) - is non-cognizable because Sultaana has no federal right to a collateral appeal.<sup>31</sup> Further, Sultaana never presented this claim to an Ohio court and there is now no procedural mechanism for him to do so. Thus, under Ohio's *res judicata* doctrine,<sup>32</sup> he is barred from now raising this claim.

In that regard, and as the State observes, Ohio's *res judicata* rule is recognized as an adequate and independent state law ground to bar federal habeas review, absent a showing of cause and prejudice.<sup>33</sup> Here, Sultaana has made no showing of cause to excuse this default, or any other default.<sup>34</sup> In particular, Sultaana cannot assign blame to any attorney for his failure to take his claims to the Ohio Supreme Court in a timely manner because, as noted, he had no right to counsel in those proceedings.<sup>35</sup>

Therefore, I recommend Ground One be dismissed for the reasons stated.

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<sup>31</sup>*Evitts v. Lucey*, 469 U.S. 387, 393 (1985).

<sup>32</sup>*See, State v. Perry*, 10 Ohio St. 2d 175 (1967).

<sup>33</sup>*Durr v. Mitchell*, 487 F.3d 423, 432 (6<sup>th</sup> Cir. 2007).

<sup>34</sup>Sultaana argues he did appeal the denial of his Rule 26(B) application to the Ohio Supreme Court. ECF # 132 at 3-5. However, as the State observes, the application itself was denied by the appeals court because it did not comply with the rules and because Sultaana, as a vexatious litigator, had not paid a filing fee and security costs. ECF # 159 at 5. Moreover, the State found no entry on the appeals court docket of an appeal nor did it find on the docket of the Ohio Supreme Court any attempt to timely attempt appeal to that court. *Id.* Sultaana's filings in this Court of material relating to the Ohio Supreme Court's treatment of his dispute over obtaining jury forms (ECF ## 175, 176, 177, 178) concerns an entirely different matter and is not relevant here.

<sup>35</sup>The State presents a brief cogent summary of Sultaana's failure to timely appeal to the Ohio Supreme Court in his direct appeal, as concerns the denial of his Rule 26(B) application or with regards to the denial of his motion for a new trial. ECF # 159 at 4-6.

**2. Ground Two**

In this ground, Sultaana maintains that his Sixth Amendment right to have counsel free from conflict of interest was violated when the Ohio court of appeals denied his counsel's motion to withdraw. Once again, the State notes that Sultaana did not appeal the decision of the appellate court that affirmed his conviction, and that no procedure is available to do so now.<sup>36</sup> Moreover, the State also observes that this point was not raised to the Ohio court of appeals in Sultaana's Rule 26(B) application, the denial of which, as stated above, was not appealed to the Ohio Supreme Court.<sup>37</sup>

Accordingly, and for similar reasons to those outlined above, I recommend that Ground Two be dismissed as procedurally defaulted.

**3. Ground Three**

In this ground for relief Sultaana contends that his right to substantive and procedural due process and to equal protection were violated when his appellate attorney supplemented the record on appeal. This also appears to be the issue raised in Ground Nineteen, where Sultaana includes it as an example of ineffective assistance. This matter also appears to be the issue raised in various supplements to the record filed by Sultaana and referenced previously.<sup>38</sup>

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<sup>36</sup>ECF # 130 at 24.

<sup>37</sup>*Id.*

<sup>38</sup>The State also observes that at least part of the substantive question concerning the use of these jury forms relates to the forms being under seal because they contain the names of jurors. ECF # 130 at 25.

I note initially in that regard that these motions and attempts to appeal go to the substantive merits of whether, as Sultaana claims, the use of the jury verdict forms was fraud upon the court, leaving the appellate court without jurisdiction. To that point, and as noted above, Sultaana did not properly appeal this substantive issue to the Ohio Supreme Court and so procedurally defaulted that issue. Further, these supplemental filings do not assert or otherwise deal with a properly framed federal claim of ineffective assistance of counsel in regards the use of these jury forms, and because Sultaana never properly or timely appealed from the denial of his Rule 26(B) application, the ineffective assistance element of this claim is also procedurally defaulted.

Accordingly, and for the reasons stated, I recommend dismissing Ground Three as procedurally defaulted.

4. *Grounds Four through Twenty-three*

Sultaana raises these grounds by attaching the claims presented in his Rule 26(B) application to his federal habeas petition. The claims were originally denied by the Ohio appeals court when it ruled that Sultaana had represented himself on appeal and so did not have counsel, it further concluded that the motion did not comport with Ohio Appellate Rule 26(B), and it finally ruled that Sultaana's filing could not be accepted because, as a vexatious litigator, he had not complied with Local Appellate Rule 3(A).<sup>39</sup>

According to Rule 7.01(A)(1)(a)(i) of the Ohio Supreme Court Rules of Practice,

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<sup>39</sup>*Id.* at 26 (citing record).



Sultaana had 45 days after the appellate court decision of February 17, 2016 to appeal to the Supreme Court of Ohio. As noted, he did not do so. Further, Rule 7.01(A)(4)(c) of the Ohio Supreme Court Rules of Practice precludes Sultaana from now moving for a delayed appeal in a Rule 26(B) matter. Moreover, such a delayed appeal would be precluded by Ohio's *res judicata* rule.

Thus, for the reasons stated, I recommend dismissing Grounds Four through Twenty-three as procedurally defaulted. I state again, as was noted above, that Sultaana has made no showing of cause such as would excuse this or any other procedural default.

### Conclusion

For the reasons stated, I recommend granting the State's motion to dismiss,<sup>40</sup> and so further recommend dismissing, with prejudice, the entire *pro se* petition of Hakeem Sultaana for a writ of habeas corpus under 28 U.S.C. § 2254.<sup>41</sup> If this recommendation is adopted, I then further recommend denying Sultaana's motion for partial summary judgment.<sup>42</sup>

**IT IS SO ORDERED:**

Dated: April 4, 2018

s/ William H. Baughman, Jr.  
United States Magistrate Judge

### Objections

Any objections to this Report and Recommendation must be filed with the Clerk of Courts within fourteen (14) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order.<sup>43</sup>

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<sup>40</sup>ECF # 130.

<sup>41</sup>ECF # 1.

<sup>42</sup>ECF # 171.

<sup>43</sup>See, *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). See also, *Thomas v. Arn*, 474 U.S. 140 (1985), *reh'g denied*, 474 U.S. 1111 (1986).

No. 18-3425

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Nov 15, 2018  
DEBORAH S. HUNT, Clerk

HAKEEM SULTAANA,  
Petitioner-Appellant,  
v.  
CHAE HARRIS, WARDEN,  
Respondent-Appellee.

ORDER

Before: GUY, STRANCH, and LARSEN, Circuit Judges.

Hakeem Sultaana petitions for rehearing en banc of this court's order entered on August 20, 2018, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

## APPENDIX/EXHIBIT D

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

HAKEEM SULTAANA, ) CASE NO. 1:16 CV 2884  
)  
Petitioner, ) JUDGE DAN AARON POLSTER  
)  
vs. ) OPINION AND ORDER  
)  
BRIGHAM SLOAN, Warden, )  
)  
Respondent. )

This case is before the Court on the Report and Recommendation of Magistrate Judge William H. Baughman, Jr. Doc #: 183 ("R&R"). The Magistrate Judge recommends that the Court grant Respondent's Motion to Dismiss the Petition for Writ of Habeas Corpus filed by Petitioner Hakeem Sultaana and dismiss the Petition. Respectively, Doc ##: 130, 1. Petitioner has filed Objections. Doc ##: 189, 191. The Court has reviewed these documents along with the voluminous record and is prepared to issue a ruling.

I.

Petitioner Hakeem Sultaana is incarcerated at the Warren Correctional Institution where he is serving an aggregate 14-year prison sentence imposed following state-court jury convictions for numerous offenses related to his participation in a car title flipping scheme. The convictions and sentence were affirmed on direct appeal. *State v. Sultaana*, No. 101492, 2016-Ohio-199 (Ohio App. Jan 21, 2016) Petitioner did not appeal the affirmance to the Ohio Supreme Court.

Sultaana has filed several petitions for writ of habeas corpus in this district, all of which were dismissed without prejudice so that Petitioner could exhaust his claims in state court. If it

is possible to separate the wheat from the chaff in this sizeable record, it appears that Sultaana has finally exhausted all his claims in state court. See, e.g., Doc #:184 and attachments thereto.

That said, Sultaana's claims were procedurally defaulted before he returned to state court to exhaust them, and the state appeals courts chose to deny him leave to consider his claims on the merits. So, although his claims are now exhausted, they are still procedurally defaulted for reasons set forth in the R&R. Sultaana makes no intelligible argument that the claims are not procedurally defaulted; rather, he devotes the lion's share of his Objections to the argument that his claims are exhausted and there is cause and prejudice to excuse the procedural defaults. The Court has already determined that he has exhausted all his claims, so the remaining question is whether he can show cause and prejudice to excuse the procedural defaults.

As "cause," Sultaana refers back to the argument he made in his opposition to Respondent's first Motion to Dismiss. See Doc #: 191 at 8 (referring to his argument in Doc #: 123). There, Sultaana argued that the state appeals court made a mistake when it denied his ineffective assistance of appellate counsel claims in his Rule 26(B) application because he represented himself on his direct appeal. Sultaana contends that he did not represent himself on his direct appeal – and it is this mistake that constitutes the cause to excuse his procedural defaults.

The Court has reviewed the state court docket which reveals that Sultaana did, in fact, represent himself on his direct appeal. See Cuyahoga County Clerk of Court's public docket, Case No. CA-14-101492.<sup>1</sup> Accordingly, since he waived his Sixth Amendment right to counsel,

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<sup>1</sup>Although three attorneys from the Ohio Public Defenders Office attempted to represent Sultaana during his direct appeal, they all eventually filed motions to withdraw because Sultaana either filed grievances against them in the Ohio Supreme Court (Assistance Public Defenders Cunliffe and Sweeney) or sued them in federal court (Assistant Public Defender Peter Galyardt).

he cannot bring ineffective assistance of counsel claims. Because he has failed to show cause to excuse his procedural defaults, the Court concludes that his claims are procedurally defaulted.

Based on the foregoing, the Court **ADOPTS** the R&R (Doc #: 183), **OVERRULES** the Objections (Doc ##: 189, 191), and **DISMISSES WITH PREJUDICE** the Petition (Doc #: 1).

## II.

While courts are tolerant of legal filings submitted by pro se litigants, such tolerance is not limitless. Federal courts have both the inherent power and constitutional obligation to protect their jurisdiction from conduct which impairs the ability to carry out Article III functions. *Procup v. Strickland*, 792 F.2d 1069, 1073 (11th Cir. 1986). Moreover, this Court has the responsibility to prevent litigants from unnecessarily encroaching on judicial machinery needed by others. *Id.* To achieve these ends, the United States Court of Appeals for the Sixth Circuit has approved enjoining vexatious and harassing litigants by requiring them to obtain leave of court before submitting additional filings. *See, e.g., Filipas v. Lemons*, 835 F.2d 1145 (6th Cir. 1987); *Wrenn v. Vanderbilt Univ. Hosp.*, 1995 WL 111480 (6th Cir. Mar. 15, 1995) (authorizing a court to enjoin harassing litigation under its inherent authority and the All Writs Act, 28 U.S.C. § 1651(a)) (citations omitted).

Former Magistrate Judge Greg White previously deemed Sultaana a vexatious litigator and enjoined him from filing new motions, objections, notices, or any other filings in one of Sultaana's earlier § 2254 petitions. See Case No. 1:15 CV 1963, Doc #: 44. And Magistrate Judge Baughman has already warned Sultaana about continuing his pattern of filing frivolous,

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The state appeals court granted those motions and, on October 15, 2015, construed a document Sultaana filed pro se on October 1, 2015 as a motion to proceed pro se and granted it.

unintelligible and unnecessary filings. Doc #: 125. Even the Eighth District Court of Appeals and the Ohio Supreme Court declared Sultaana a vexatious litigator and prohibited him from instituting any appeals or original actions, continuing any appeals or original actions, or filing any motions in any pending appeals or original actions without first obtaining leave of court.

Accordingly, the Court hereby **DEEMS** Hakeem Sultaana a vexatious litigator and **ENJOINS** him from filing any new motions, objections, notices or any other filings in this case including, as the Court previous stated, a motion to reconsider this ruling. If Sultaana disagrees with this Opinion and Order, he shall appeal it to the Sixth Circuit Court of Appeals. The Clerk's Office is hereby **ORDERED** to refrain from filing any document submitted by Petitioner Sultaana or anyone on his behalf, and to return those documents citing this Order.

**IT IS SO ORDERED.**

/s/ Dan A. Polster April 26, 2018

**Dan Aaron Polster**  
**United States District Judge**



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Dan Aaron Polster  
United States District Judge

(4)

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(4) The petitioner cannot demonstrate either “cause for the default and actual prejudice as a result of the alleged violation of federal law,” or “that failure to consider the claims will result in a fundamental miscarriage of justice.”<sup>28</sup>

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## **B. Application of relevant law**

### ***1. Ground One***

As the State points out, Sultaana’s first ground for federal habeas relief - that the Ohio Appeals Court violated his rights to substantive and procedural due process, and to equal protection of the law, by denying him leave to re-open his appeal under Ohio Rule

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<sup>26</sup> *Id.* (quoting *Maupin*, 785 F.2d at 138). (“A state procedural rule is an independent ground when it does not rely on federal law.”) (citing *Coleman v. Thompson*, 501 U.S. 722, 732).

<sup>27</sup> *Id.* (citation omitted).

<sup>28</sup> *Id.* (quoting *Coleman*, 501 U.S. at 750).

<sup>29</sup> *Id.* (quoting *Murray v. Carrier*, 477 U.S. 478, 488 (1986)).

<sup>30</sup> *Id.* (quoting *United States v. Frady*, 456 U.S. 152, 170 (1982) (emphasis in original)).

of Appellate Procedure 26(B) - is non-cognizable because Sultaana has no federal right to a collateral appeal.<sup>31</sup> Further, Sultaana never presented this claim to an Ohio court and there is now no procedural mechanism for him to do so. Thus, under Ohio's *res judicata* doctrine,<sup>32</sup> he is barred from now raising this claim.

In that regard, and as the State observes, Ohio's *res judicata* rule is recognized as an adequate and independent state law ground to bar federal habeas review, absent a showing of cause and prejudice.<sup>33</sup> Here, Sultaana has made no showing of cause to excuse this default, or any other default.<sup>34</sup> In particular, Sultaana cannot assign blame to any attorney for his failure to take his claims to the Ohio Supreme Court in a timely manner because, as noted, he had no right to counsel in those proceedings.<sup>35</sup>

Therefore, I recommend Ground One be dismissed for the reasons stated.

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<sup>31</sup>*Evitts v. Lucey*, 469 U.S. 387, 393 (1985).

<sup>32</sup>See, *State v. Perry*, 10 Ohio St. 2d 175 (1967).

<sup>33</sup>*Durr v. Mitchell*, 487 F.3d 423, 432 (6<sup>th</sup> Cir. 2007).

<sup>34</sup>Sultaana argues he did appeal the denial of his Rule 26(B) application to the Ohio Supreme Court. ECF # 132 at 3-5. However, as the State observes, the application itself was denied by the appeals court because it did not comply with the rules and because Sultaana, as a vexatious litigator, had not paid a filing fee and security costs. ECF # 159 at 5. Moreover, the State found no entry on the appeals court docket of an appeal nor did it find on the docket of the Ohio Supreme Court any attempt to timely attempt appeal to that court. *Id.* Sultaana's filings in this Court of material relating to the Ohio Supreme Court's treatment of his dispute over obtaining jury forms (ECF ## 175, 176, 177, 178) concerns an entirely different matter and is not relevant here.

<sup>35</sup>The State presents a brief cogent summary of Sultaana's failure to timely appeal to the Ohio Supreme Court in his direct appeal, as concerns the denial of his Rule 26(B) application or with regards to the denial of his motion for a new trial. ECF # 159 at 4-6.

**2. Ground Two**

In this ground, Sultaana maintains that his Sixth Amendment right to have counsel free from conflict of interest was violated when the Ohio court of appeals denied his counsel's motion to withdraw. Once again, the State notes that Sultaana did not appeal the decision of the appellate court that affirmed his conviction, and that no procedure is available to do so now.<sup>36</sup> Moreover, the State also observes that this point was not raised to the Ohio court of appeals in Sultaana's Rule 26(B) application, the denial of which, as stated above, was not appealed to the Ohio Supreme Court.<sup>37</sup>

Accordingly, and for similar reasons to those outlined above, I recommend that Ground Two be dismissed as procedurally defaulted.

**3. Ground Three**

In this ground for relief Sultaana contends that his right to substantive and procedural due process and to equal protection were violated when his appellate attorney supplemented the record on appeal. This also appears to be the issue raised in Ground Nineteen, where Sultaana includes it as an example of ineffective assistance. This matter also appears to be the issue raised in various supplements to the record filed by Sultaana and referenced previously.<sup>38</sup>

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<sup>36</sup>ECF # 130 at 24.

<sup>37</sup>*Id.*

<sup>38</sup>The State also observes that at least part of the substantive question concerning the use of these jury forms relates to the forms being under seal because they contain the names of jurors. ECF # 130 at 25.



I note initially in that regard that these motions and attempts to appeal go to the substantive merits of whether, as Sultaana claims, the use of the jury verdict forms was fraud upon the court, leaving the appellate court without jurisdiction. To that point, and as noted above, Sultaana did not properly appeal this substantive issue to the Ohio Supreme Court and so procedurally defaulted that issue. Further, these supplemental filings do not assert or otherwise deal with a properly framed federal claim of ineffective assistance of counsel in regards the use of these jury forms, and because Sultaana never properly or timely appealed from the denial of his Rule 26(B) application, the ineffective assistance element of this claim is also procedurally defaulted.

Accordingly, and for the reasons stated, I recommend dismissing Ground Three as procedurally defaulted.

**4. *Grounds Four through Twenty-three***

Sultaana raises these grounds by attaching the claims presented in his Rule 26(B) application to his federal habeas petition. The claims were originally denied by the Ohio appeals court when it ruled that Sultaana had represented himself on appeal and so did not have counsel, it further concluded that the motion did not comport with Ohio Appellate Rule 26(B), and it finally ruled that Sultaana's filing could not be accepted because, as a vexatious litigator, he had not complied with Local Appellate Rule 3(A).<sup>39</sup>

According to Rule 7.01(A)(1)(a)(i) of the Ohio Supreme Court Rules of Practice,

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<sup>39</sup>*Id.* at 26 (citing record).

Sultaana had 45 days after the appellate court decision of February 17, 2016 to appeal to the Supreme Court of Ohio. As noted, he did not do so. Further, Rule 7.01(A)(4)(c) of the Ohio Supreme Court Rules of Practice precludes Sultaana from now moving for a delayed appeal in a Rule 26(B) matter. Moreover, such a delayed appeal would be precluded by Ohio's *res judicata* rule.

Thus, for the reasons stated, I recommend dismissing Grounds Four through Twenty-three as procedurally defaulted. I state again, as was noted above, that Sultaana has made no showing of cause such as would excuse this or any other procedural default.

**Conclusion**

For the reasons stated, I recommend granting the State's motion to dismiss,<sup>40</sup> and so further recommend dismissing, with prejudice, the entire *pro se* petition of Hakeem Sultaana for a writ of habeas corpus under 28 U.S.C. § 2254.<sup>41</sup> If this recommendation is adopted, I then further recommend denying Sultaana's motion for partial summary judgment.<sup>42</sup>

**IT IS SO ORDERED:**

Dated: April 4, 2018

s/ William H. Baughman, Jr.  
United States Magistrate Judge

**Objections**

Any objections to this Report and Recommendation must be filed with the Clerk of Courts within fourteen (14) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order.<sup>43</sup>

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<sup>40</sup>ECF # 130.

<sup>41</sup>ECF # 1.

<sup>42</sup>ECF # 171.

<sup>43</sup>See, *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). See also, *Thomas v. Arn*, 474 U.S. 140 (1985), *reh'g denied*, 474 U.S. 1111 (1986).

No. 18-3425

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Nov 15, 2018  
DEBORAH S. HUNT, Clerk

HAKEEM SULTAANA,

Petitioner-Appellant,

v.

CHAE HARRIS, WARDEN,

Respondent-Appellee.

ORDER

Before: GUY, STRANCH, and LARSEN, Circuit Judges.

Hakeem Sultaana petitions for rehearing en banc of this court's order entered on August 20, 2018, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

HAKEEM SULTAANA,

Petitioner,

vs.

BRIGHAM SLOAN, Warden,

Respondent.

) CASE NO. 1:16 CV 2884

) JUDGE DAN AARON POLSTER

) OPINION AND ORDER

This case is before the Court on the Report and Recommendation of Magistrate Judge William H. Baughman, Jr. **Doc #: 183** ("R&R"). The Magistrate Judge recommends that the Court grant Respondent's Motion to Dismiss the Petition for Writ of Habeas Corpus filed by Petitioner Hakeem Sultaana and dismiss the Petition. Respectively, **Doc ##: 130, 1**. Petitioner has filed Objections. **Doc ##: 189, 191**. The Court has reviewed these documents along with the voluminous record and is prepared to issue a ruling.

I.

Petitioner Hakeem Sultaana is incarcerated at the Warren Correctional Institution where he is serving an aggregate 14-year prison sentence imposed following state-court jury convictions for numerous offenses related to his participation in a car title flipping scheme. The convictions and sentence were affirmed on direct appeal. *State v. Sultaana*, No. 101492, 2016-Ohio-199 (Ohio App. Jan 21, 2016) Petitioner did not appeal the affirmance to the Ohio Supreme Court.

Sultaana has filed several petitions for writ of habeas corpus in this district, all of which were dismissed without prejudice so that Petitioner could exhaust his claims in state court. If it

is possible to separate the wheat from the chaff in this sizeable record, it appears that Sultaana has finally exhausted all his claims in state court. See, e.g., Doc #:184 and attachments thereto.

That said, Sultaana's claims were procedurally defaulted before he returned to state court to exhaust them, and the state appeals courts chose to deny him leave to consider his claims on the merits. So, although his claims are now exhausted, they are still procedurally defaulted for reasons set forth in the R&R. Sultaana makes no intelligible argument that the claims are not procedurally defaulted; rather, he devotes the lion's share of his Objections to the argument that his claims are exhausted and there is cause and prejudice to excuse the procedural defaults. The Court has already determined that he has exhausted all his claims, so the remaining question is whether he can show cause and prejudice to excuse the procedural defaults.

As "cause," Sultaana refers back to the argument he made in his opposition to Respondent's first Motion to Dismiss. See Doc #: 191 at 8 (referring to his argument in Doc #: 123). There, Sultaana argued that the state appeals court made a mistake when it denied his ineffective assistance of appellate counsel claims in his Rule 26(B) application because he represented himself on his direct appeal. Sultaana contends that he did not represent himself on his direct appeal – and it is this mistake that constitutes the cause to excuse his procedural defaults.

The Court has reviewed the state court docket which reveals that Sultaana did in fact represent himself on his direct appeal. See Cuyahoga County Clerk of Court's public docket, Case No. CA-14-101492.<sup>1</sup> Accordingly, since he waived his Sixth Amendment right to counsel,

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<sup>1</sup>Although three attorneys from the Ohio Public Defenders Office attempted to represent Sultaana during his direct appeal, they all eventually filed motions to withdraw because Sultaana either filed grievances against them in the Ohio Supreme Court (Assistance Public Defenders Cunliffe and Sweeney) or sued them in federal court (Assistant Public Defender Peter Galyardt).

he cannot bring ineffective assistance of counsel claims. Because he has failed to show cause to excuse his procedural defaults, the Court concludes that his claims are procedurally defaulted.

Based on the foregoing, the Court **ADOPTS** the R&R (Doc #: 183), **OVERRULES** the Objections (Doc ##: 189, 191), and **DISMISSES WITH PREJUDICE** the Petition (Doc #: 1).

## II.

While courts are tolerant of legal filings submitted by pro se litigants, such tolerance is not limitless. Federal courts have both the inherent power and constitutional obligation to protect their jurisdiction from conduct which impairs the ability to carry out Article III functions. *Procup v. Strickland*, 792 F.2d 1069, 1073 (11th Cir. 1986). Moreover, this Court has the responsibility to prevent litigants from unnecessarily encroaching on judicial machinery needed by others. *Id.* To achieve these ends, the United States Court of Appeals for the Sixth Circuit has approved enjoining vexatious and harassing litigants by requiring them to obtain leave of court before submitting additional filings. *See, e.g., Filipas v. Lemons*, 835 F.2d 1145 (6th Cir. 1987); *Wrenn v. Vanderbilt Univ. Hosp.*, 1995 WL 111480 (6th Cir. Mar. 15, 1995) (authorizing a court to enjoin harassing litigation under its inherent authority and the All Writs Act, 28 U.S.C. § 1651(a)) (citations omitted).

Former Magistrate Judge Greg White previously deemed Sultaana a vexatious litigator and enjoined him from filing new motions, objections, notices, or any other filings in one of Sultaana's earlier § 2254 petitions. See Case No. 1:15 CV 1963, Doc #: 44. And Magistrate Judge Baughman has already warned Sultaana about continuing his pattern of filing frivolous,

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The state appeals court granted those motions and, on October 15, 2015, construed a document Sultaana filed pro se on October 1, 2015 as a motion to proceed pro se and granted it.

unintelligible and unnecessary filings. Doc #: 125. Even the Eighth District Court of Appeals and the Ohio Supreme Court declared Sultaana a vexatious litigator and prohibited him from instituting any appeals or original actions, continuing any appeals or original actions, or filing any motions in any pending appeals or original actions without first obtaining leave of court.

Accordingly, the Court hereby **DEEMS** Hakeem Sultaana a vexatious litigator and **ENJOINS** him from filing any new motions, objections, notices or any other filings in this case including, as the Court previous stated, a motion to reconsider this ruling. If Sultaana disagrees with this Opinion and Order, he shall appeal it to the Sixth Circuit Court of Appeals. The Clerk's Office is hereby **ORDERED** to refrain from filing any document submitted by Petitioner Sultaana or anyone on his behalf, and to return those documents citing this Order.

**IT IS SO ORDERED.**

/s/ Dan A. Polster April 26, 2018  
**Dan Aaron Polster**  
**United States District Judge**