Appendix A

No. 22-3607

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
May 30, 2023
DEBORAH S. HUNT, Clerk

CHRISTOPHER MICHAEL WILLIAMS,

Petitioner-Appellant,

v.

TIM SHOOP,

Respondent-Appellee.

ORDER

Before: NORRIS, SILER, and MURPHY, Circuit Judges.

Christopher Michael Williams, a pro se Ohio prisoner, petitions for rehearing of this court's March 28, 2023, order denying his motion for a certificate of appealability. We have reviewed the petition and conclude that the court did not overlook or misapprehend any point of law or fact in denying Williams's motion for a certificate of appealability. *See* Fed. R. App. P. 40(a)(2).

Accordingly, the petition for rehearing is **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 22-3607

Appendix B

CHRISTOPHER MICHAEL WILLIAMS,

Petitioner-Appellant,

v.

TIM SHOOP,

Respondent.

Before: CLAY, Circuit Judge.

JUDGMENT

THIS MATTER came before the court upon the application by Christopher Michael Williams for a certificate of appealability.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the application for a certificate of appealability is DENIED.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

No. 22-3607

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHRISTOPHER MICHAEL WILLIAMS,

Petitioner-Appellant,

v.

TIM SHOOP,

Respondent.

ORDER

Before: CLAY, Circuit Judge.

Christopher Michael Williams, a pro se Ohio prisoner, appeals a district court judgment denying his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254 and moves this court for a certificate of appealability (COA). Williams also moves for leave to proceed in forma pauperis.

In 2016, a jury found Williams guilty of raping two children under the age of 10, in violation of Ohio Revised Code § 2907.02(A)(1)(b). He was sentenced to two consecutive life terms in prison. The Ohio Court of Appeals affirmed, *State v. Williams*, 101 N.E.3d 547 (Ohio Ct. App. 2017), and the Ohio Supreme Court denied Williams's motion for leave to file a delayed appeal, *State v. Williams*, 96 N.E.3d 296 (Ohio 2018) (table).

Williams then applied to reopen his direct appeal under Ohio Rule of Appellate Procedure 26(B), and the Ohio Court of Appeals denied his motion. The Ohio Supreme Court declined jurisdiction. Thereafter, Williams filed a petition for post-conviction relief, which the trial court denied. Instead of appealing that denial, Williams filed a second petition for post-conviction relief, which remains pending.

In his § 2254 petition, Williams claims that (1) trial counsel, Richard Feil, was ineffective for "fraudulent[ly]" breaking his promise to call Trent Elliot Tharps, a convicted sex offender living with the victims' mother, (2) the trial court admitted the victims' videotaped interviews at trial, in violation of his Confrontation Clause rights, (3) Feil committed a "fraud upon the court" and failed to interview Tharps, and (4) had he known that Feil would not call Tharps at trial, he would have accepted the prosecution's plea offer.

A magistrate judge recommended that Williams's claims be dismissed as procedurally defaulted. Over Williams's objections, which the district court deemed in part to be insufficiently specific, the district court adopted the report and recommendation, concluding that Williams's claims were procedurally defaulted, that he did not demonstrate cause for the default, and that, alternatively, his claims related to counsel's performance lacked merit.

A COA may be granted "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). To obtain a COA, the movant must demonstrate that reasonable jurists would find the district court's assessment of his claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Williams has expressly abandoned his second claim in his motion for a COA. That leaves his first, third, and fourth claims. Considered together, as the district court appropriately did, these claims are that: (1) Feil performed deficiently when he failed to deliver on his alleged promise to call Tharps as a witness to support "an alternative suspect defense"; (2) Tharps's absence from trial led to a guilty verdict; and (3) had he known that Feil would not have called Tharps at trial, he would have accepted the prosecution's plea offer.

To prevail on these claims, Williams must establish (1) that Feil's performance was deficient and (2) that Feil's deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

With respect to the first ineffective-assistance claim, the district court concluded that Williams failed to meet the deficient-performance prong. It explained that, contrary to Williams's

assertion, Feil *did* pursue Tharps as an "alternative suspect" and that evidence of that theory was presented at trial: in particular, as Williams himself noted, the victims' mother testified that she "dat[ed] [Tharps] and allow[ed] him around the alleged victims knowing he was a child pred[a]tor" and "admit[ed] . . . on the stand" that Tharps was "around the alleged victims during the time of the indictment." This method of presenting an "alternative suspect defense" was not an unreasonable tactical decision, the district court explained, because the other method of presenting the defense—through Tharp himself—could have opened the door to hostile testimony. In other words, the jurors already heard evidence, through the victim's mother, that could lead them to believe that another person (Tharps, a "child predator") could have committed the crimes—which supports Williams's proclaimed innocence—and presenting evidence of the same through Tharps would be cumulative at best and damaging at worst. Because whether to call certain witnesses is the type of strategic decision that is "virtually unchallengeable," *Halve v. Davis*, 512 F. App'x 516, 521 (6th Cir. 2013) (quoting *Strickland*, 566 U.S. at 690), reasonable jurists could not debate the district court's rejection of this ineffective-assistance claim.

As to the remaining ineffective-assistance claim, the district court determined that Williams failed to demonstrate prejudice because the record contradicted his assertion that he would have accepted the prosecution's plea offer had Feil informed him that Tharps would not testify at trial. *See Lafler v. Cooper*, 566 U.S. 156, 164 (2012) (providing that, in the plea context, the prejudice inquiry asks whether "there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances")). The district court points to two affidavits showing that "Williams remained intent on proceeding to trial": one from Williams's uncle stating that Feil "kept telling [Williams] to plead guilty if he didn't want to go to trial" and that Feil "was upset because [Williams] did not plead guilty" and one from Williams's ex-girlfriend stating that Feil "was suppose[d] to call [Tharps]" but that, "instead of doing what was planned[,] he kept pressuring [Williams] to take a plea deal," which Williams declined to do. "This evidence," the district court explained, "indicates that Williams was

resolutely opposed to accepting the plea deal—accordingly, even if Feil had communicated that he did not intend to call Tharps to testify, the Court is not persuaded that it would have changed Williams' decision to proceed to trial."

No reasonable jurist could disagree with the district court's rejection of this ineffective-assistance claim. True, the record contains an affidavit submitted in support of Williams's second petition for post-conviction relief in which Williams avers that Feil's "fail[ure] to call [Tharps] to the stand . . . , after giving [him] legal assurances to do so" caused him to "unknowingly and unintelligibly forgo the plea deal offered by the State of Ohio, for [his] sole prerogative for going to trial was to call [Tharps] to the stand and pursue and alternative suspect defense." But other evidence in the record renders Williams's assertion that Feil induced him to go to trial by promising to call Tharps—while Feil was simultaneously equipped with a plea offer from the State—implausible. The two affidavits described above show that Feil urged Williams to accept the plea offer but that Williams insisted on proceeding to trial, and it was noted on direct appeal that Williams "repeatedly refused" to accept the prosecution's plea offer. *Williams*, 101 N.E.3d at 557. Moreover, also attached to Williams's second petition for post-conviction relief is a letter from Feil to Williams stating that Williams's "rejection of the Alford Plea was against legal advi[c]e," that "[n]o fraudulent or incompetent representations were made regarding the Alford Plea," and that matters related to Tharps were "fully investigated." In other words, there is ample evidence that Feil advised Williams to accept State's plea offer and that contradicts Williams's assertion that he rejected the plea offer because Feil promised that he would call Tharps to the stand in hopes that Tharps would confess to raping the minor victims, notwithstanding their testimony that Williams—their father—committed the offenses when they stayed overnight with him at his mother's home. *See Williams*, 101 N.E.3d at 551.

In habeas proceedings, "contentions that in the face of the record are wholly incredible" may be summarily dismissed. *Blackledge v. Allison*, 431 U.S. 63, 74 (1977). Because Williams has not met his "burden of establishing his right to federal habeas relief and of proving all facts necessary to show a constitutional violation," *Black v. Carpenter*, 866 F.3d 734, 744 (6th Cir.

2017) (quoting *Caver v. Straub*, 349 F.3d 340, 351 (6th Cir. 2003)), no reasonable jurist could debate the district court's rejection of this ineffective-assistance claim.

Williams also challenges the denial of his request for a stay to pursue his second petition for post-conviction relief in the state courts. Although a district court has discretion to stay a § 2254 petition and hold it in abeyance pending exhaustion of state remedies, it should only exercise that discretion if there is good cause for the petitioner's failure to exhaust, if the unexhausted claims are "potentially meritorious," and if "there is no indication that the petitioner engaged in intentionally dilatory litigation tactics." *Rhines v. Weber*, 544 U.S. 269, 278 (2005). Most detrimental to Williams's request for a stay is that his claims lack merit for the reasons set forth above. In addition, Williams's pursuit of the claims in his second petition for post-conviction relief in state court is "almost certainly futile" because the claims are untimely or, to the extent they were raised in his first petition, barred by res judicata. No reasonable jurist therefore could debate the district court's denial of Williams's request for a stay.

The court therefore **DENIES** the motion for a COA and **DENIES** as moot the motion for leave to proceed in forma pauperis.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Appendix C

CHRIS WILLIAMS,

Petitioner,

v.

WARDEN, CHILLICOTHE CORRECTIONAL INSTITUTION,

Respondent.

Case No. 1:20-cv-99
JUDGE DOUGLAS R. COLE
Magistrate Judge Merz

OPINION AND ORDER

This cause comes before the Court on Magistrate Judge Merz's January 15, 2021, Report and Recommendations ("R&R," Doc. 19). In his R&R, the Magistrate Judge[1] recommends that the Court dismiss Petitioner Chris Williams' Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 ("Pet.," Doc. 8) with prejudice.

After the Magistrate Judge issued his initial R&R (Doc. 19), Williams filed Objections ("Objs.," Doc. 20) on February 8, 2021. In response, the Court issued an Order (Doc. 23) returning this matter to the Magistrate Judge pursuant to Fed. R. Civ. P. 72(b)(3) for further analysis. The Magistrate Judge then issued his Supplemental Report and Recommendations ("Suppl. R&R," Doc. 27) on March 1, 2021. Williams filed Objections to the Supplemental R&R ("Suppl. Objs.," Doc. 28) on March 22, 2021. That Supplemental R&R (with Williams' Objections to it) is also before the Court.

[1] This matter was originally assigned to Magistrate Judge Litkovitz, before being transferred to Magistrate Judge Merz on January 5, 2021. For the purposes of this Opinion, references to the "Magistrate Judge" refer to Magistrate Judge Merz, unless explicitly stated.

Finally, also before the Court are Williams' Objections ("Strike Objs.," Doc. 25) to the Magistrate Judge's Order ("Strike Order," Doc. 22) striking Williams' self-described Rule 44 Motion[2] and accompanying "Manifesto of Truth and Affidavit of Truth and Understanding" (Doc. 21) from the record.

For the reasons set forth more fully below, the Court **OVERRULES** Williams' Objections (Doc. 20) to the R&R (Doc. 19) and Objections (Doc. 28) to the Supplemental R&R (Doc. 27). Accordingly, the Court **ADOPTS** the R&R (Doc. 19) and Supplemental R&R (Doc. 27) and **DISMISSES** Williams' Habeas Petition (Doc. 8) **WITH PREJUDICE**. Because the Court finds that reasonable jurists would not disagree with this conclusion, the Court **DENIES** Williams a certificate of appealability. Further, the Court **CERTIFIES** that any appeal of this Opinion would be objectively frivolous.

Finally, the Court **OVERRULES** Williams' Objections (Doc. 25) to the Magistrate Judge's Order (Doc. 22) striking his Rule 44 Motion and "Manifesto of Truth and Affidavit of Truth and Understanding" (Doc. 21) from the record.

PROCEDURAL HISTORY

A. State Court Proceedings

On April 10, 2015, a Hamilton County grand jury indicted Williams on two counts of rape of two minors under the age of ten in violation of Ohio Revised Code

[2] Fed R. Civ P. 44 provides the rules for proving an official record in civil proceedings. Because Williams' Motion here does not appear to relate to any official records, the Court is uncertain why he describes it as a "Rule 44 Motion." Nonetheless, for the sake of consistency, the Court will describe this docket entry as the "Rule 44 Motion" in this Opinion.

§ 2907.02(A)(1)(B). (Indictment, Doc. 14, #103–04[3]). Both before and during Williams' trial, the prosecution offered Williams an *Alford* plea deal whereby he would have received a six-year prison sentence. (Ltr. from R. Feil, Doc. 14, #355; Unsigned Plea Deal, Doc. 14, #358). Williams rejected the plea deal, and the jury convicted him. (Ltr. From R. Feil, Doc. 14, #355). The trial court entered judgment on March 11, 2016, and Williams was sentenced to two consecutive life terms in prison. (Notice of App., Doc. 14, #320).

After Williams' conviction, he appealed to Ohio's First District Court of Appeals, which affirmed the lower court's ruling on December 8, 2017. (R&R, Doc. 19, #630). Williams failed to timely appeal to the Ohio Supreme Court, and on April 25, 2018, the Ohio Supreme Court denied his application to file a delayed appeal. (Order Denying Mot. for Delayed App., Doc. 14, #267).

On February 20, 2018, and March 1, 2018, respectively, Williams also filed two applications to reopen his direct appeal under Ohio R. App. P. 26(B), alleging ineffective assistance of appellate counsel. (First Appl. to Reopen App., Doc. 14, #275; Second Appl. to Reopen App., Doc. 14, #279). The First District Court of Appeals denied the applications on October 16, 2018 (Order Denying Appl. to Reopen App., Doc. 14, #290), and the Supreme Court of Ohio declined jurisdiction on February 6, 2019 (Order Denying Jurisdiction, Doc. 14, #319).

Williams also attempted to obtain further relief at the trial court level. He filed his first petition for post-conviction relief on September 6, 2017. (First Pet. for Post-

[3] Refers to PAGEID #.

Conviction Relief, Doc. 14, #320). The court denied that petition on September 12, 2017 (Order Denying First Pet. for Post-Conviction Relief, Doc. 14, #342), and Williams did not appeal. Williams filed a second petition for post-conviction relief on December 23, 2019 (Second Pet. for Post-Conviction Relief, Doc. 14, #345), which remained pending at the time the Return of Writ in this case was filed. (*See* R&R, Doc. 19, #630).

B. Williams' Habeas Petition

Williams initiated the instant habeas proceedings on February 6, 2020. (Doc. 1). In his Petition, Williams pleads four grounds for relief. (Doc. 8). The first ground asserts a claim for ineffective assistance of trial counsel. (*Id.* at #65). Specifically, Williams states in his Petition that he and his trial counsel, Richard Feil, discovered that Trent Elliot Tharps, "the live[-]in boyfriend of [the] alleged victims[']' mother," "was a convicted sex offender with child victims." (*Id.*). Williams states that Feil "promise[d Williams] and his family that he would call [Tharps] to the stand and implement an alternative suspect defense," and Williams agreed to proceed to trial based on this promise. (*Id.*). However, when the time came, Feil never called Tharps. (*Id.*). Because Feil "usurped" the defense upon which Williams made the decision to proceed to trial, Williams argues that Feil's counsel was ineffective. (*Id.*).

Williams' second ground for relief argues that the trial court violated the Sixth Amendment's Confrontation Clause by "allow[ing] the jurors to view testimonial taped interviews of" the child victims. (*Id.* at #67). In these interviews, the child victims state that Williams made sexual contact with them. (*Id.*). While Williams

states that the interviews were nominally recorded for "medical treatment," their actual purpose was to "collect evidence [for] trial." (*Id.*). Because the interviews were thus testimonial in nature, Williams argues they should not have been admitted. (*Id.*).

Williams' third ground for relief retreads the same arguments as his first claim, arguing that his trial attorney committed "fraud upon the court" by "fail[ing] to interview [Tharps] for [his] defense even though he made legal assurances to do so." (*Id.* at #68).

Finally, Williams brings another ineffective assistance of counsel claim, arguing that Feil "was incompetent for not fully informing [him] of his inability to call key witnesses before trial." (*Id.* at #70). Williams argues that "if defense counsel [had] informed him that key witnesses would not be available to testify," he would have chosen to accept the prosecution's plea deal, rather than choosing to proceed to trial. (*Id.*).

C. The R&R's Analysis

After Williams filed his Petition, the Magistrate Judge issued the R&R, recommending that the Court dismiss each of Williams' claims as barred under the procedural default doctrine. (R&R, Doc. 19). As the Supreme Court has explained, "a federal court may not review federal claims that were procedurally defaulted in state court—that is, claims that the state court denied based on an adequate and independent state procedural rule." *Davila v. Davis*, 137 S. Ct. 2058, 2064 (2017). To

determine whether a habeas petitioner's claim is barred by the procedural default doctrine, courts employ a four-part test:

> [f]irst, the court must determine that there is a state procedural rule that is applicable to the petitioner's claim and that the petitioner failed to comply with the rule. Second, the court must decide whether the state courts actually enforced the state procedural sanction. Third, the court must decide whether the state procedural forfeiture is an 'adequate and independent' state ground on which the state can rely to foreclose review of a federal constitutional claim. Fourth, once the court determines that a state procedural rule was not complied with and that the rule was an adequate and independent state ground, then the petitioner must demonstrate that there was 'cause' for him to not follow the procedural rule and that he was actually prejudiced by the alleged constitutional error.

Smith v. Warden, 780 F. App'x 208, 218–19 (6th Cir. 2019) (quoting *Maupin v. Smith*, 785 F.2d 135, 138 (6th Cir. 1986)) (internal modifications omitted).

The R&R rejects Williams' first claim—ineffective assistance of counsel based on Feil's failure to call Tharps as a witness—as procedurally defaulted for three reasons. First, Williams "did not raise [the claim] on direct appeal." (Suppl. R&R, Doc. 27, #674–75 (citing R&R, Doc. 19, #631–35)). Second, although Williams had raised this first claim as an underlying issue in his two Ohio R. App. P. 26(B) Applications for reopening his appeal, the R&R concludes that this "did not preserve [the ineffective assistance of trial counsel claim] for merits review." (*Id.*). And third, although Williams "claimed ineffective assistance of trial counsel in his first petition for post-conviction relief, ... [he] did not appeal from the denial of that petition." (*Id.*). The R&R concludes that each of these means that Williams' first claim is procedurally defaulted under Ohio law. (*Id.*).

The R&R also rejects Williams' second claim—violation of the confrontation clause based on the admission of the recorded interview with the victims—finding that Williams defaulted this claim by failing to appeal to the Supreme Court of Ohio on direct appeal. (R&R, Doc. 19, #637–38).

The R&R concludes that Williams' third ground for relief—ineffective assistance of counsel for failure to interview Tharps—"repleads Ground One." (Suppl. R&R, Doc. 27, #675 (citing R&R, Doc. 19, #638)). Accordingly, the R&R recommends that the third ground for relief be dismissed for the same reasons it recommends dismissing the first ground. (*Id.*).

Finally, the R&R rejects Williams' fourth ground for relief—ineffective assistance of counsel based on Feil's "failure to advise Williams that certain key witnesses could not be called to testify." (*Id.*). Because this claim could have been raised in Williams' first petition for post-conviction relief and was not, the R&R concludes that the procedural default doctrine bars it, as well. (*Id.* (citing R&R, Doc. 19, #639)).

D. Williams' Objections to the R&R

After the Magistrate Judge issued his R&R, Williams filed his initial Objections. There, he raises four arguments against the Magistrate Judge's analysis in the R&R. First, Williams objects to portions of the R&R where the Magistrate Judge characterizes him as a "pro se" litigant. (Objs., Doc. 20, #641). Second, although Williams waives his second and fourth claims for relief, (*id.* at #648), he argues that good cause exists to excuse any alleged procedural default as to the first and third

claims. (*Id.* at #642). In the alternative, should the Court decline to excuse his procedural default as to the first and third claims, Williams asks that the Court stay these proceedings to allow him to return to state court to exhaust them. (*Id.* at #649). Third, Williams argues that the Hamilton County Court of Common Pleas could not convict him because it is "not a Constitutional Court recognized by name or definite description in the Constitution." (*Id.* at #647). Fourth, Williams asserts that his Indictment was invalid because it was not supported by an affidavit. (*Id.* at #641).

E. The Supplemental R&R

After Williams filed his Objections to the R&R, the undersigned then returned this matter to the Magistrate Judge for further analysis. (Order, Doc. 23). The Magistrate Judge subsequently issued a Supplemental R&R, where he rejects each of the arguments in Williams' Objections. (Doc. 27). First, the Magistrate Judge expresses some confusion as to Williams' argument that he is not "pro se"—as "pro se" simply means that a litigant is not represented by counsel (which Williams is not). (*Id.* at #675–76). Second, the Magistrate Judge finds that Williams has failed to demonstrate good cause excusing his procedural default as to the first and third claims—and in any event, those claims fail on the merits. (*Id.* at #676–78). Third, the Magistrate Judge rejects—and struggles to discern the meaning of—Williams' argument that the Hamilton County Court of Common Pleas lacked the constitutional authority to convict him. (*Id.* at #678). Fourth, because Williams' Indictment included a grand jury true bill finding probable cause, the Magistrate

Judge rejects Williams' argument that his Indictment was invalid for lack of an affidavit. (*Id.* at #676).

F. Williams' Objections to the Supplemental R&R

After the Magistrate Judge issued his Supplemental R&R, Williams responded by filing an additional round of Objections. (Doc. 28). There, Williams first reiterates his argument that he is not "pro se." (*Id.* at #683–85). Second, Williams contends that his alleged procedural default on his first and third claims should be excused, and requests discovery to give him the opportunity to develop this argument at further length. (*Id.* at #680). In the alternative, he requests a stay. (*Id.* at #681). Third, Williams raises an additional claim for relief related to an alleged *Brady* violation based on newly discovered evidence. (*Id.* at #689). Williams does not respond, however, to the portions of the Supplemental R&R where the Magistrate Judge rejects his contention that the Hamilton County Court of Common Pleas lacked the constitutional authority to convict him or that his Indictment was invalid.

LEGAL STANDARD

Under Fed. R. Civ. P. 72(b)(3), district courts review an R&R de novo after a party files a timely objection. This review, however, applies only to "any portion to which a proper objection was made." *Richards v. Colvin*, No. 2:12-cv-748, 2013 WL 5487045, at *1 (S.D. Ohio Sept. 30, 2013). In response to such an objection, "[t]he district court 'may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.'" *Id.* (quoting Fed. R. Civ. P. 72(b)(3)). By contrast, if a party makes only a general

objection, that "has the same effect[] as would a failure to object." *Howard v. Sec'y of Health & Hum. Servs.*, 932 F.2d 505, 509 (6th Cir. 1991); *Boyd v. United States*, No. 1:16-cv-802, 2017 WL 680634, at *1 (S.D. Ohio Feb. 21, 2017). That is, a litigant must identify each issue in the R&R to which he or she objects with sufficient clarity that the Court can identify it, or else that issue is deemed waived. *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995) ("The objections must be clear enough to enable the district court to discern those issues that are dispositive and contentious.").

That being said, here, as noted, the petitioner is proceeding pro se. A pro se litigant's pleadings are to be construed liberally and are subject to less stringent standards than formal pleadings filed by attorneys. *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972). At the same time, pro se litigants must still comply with the procedural rules that govern civil cases. *McNeil v. United States*, 508 U.S. 106, 113 (1993).

WILLIAMS' OBJECTIONS TO THE R&R AND SUPPLEMENTAL R&R

Having reviewed Williams' Objections to the R&R and Objections to the Supplemental R&R, it appears that Williams is raising five separate arguments against the Magistrate Judge's recommendations. First, Williams objects to being characterized as "pro se." Second, while waiving his second and fourth claims for relief, Williams maintains that his first and third claims are meritorious and that the Court should excuse any alleged procedural default. Third, Williams raises a new *Brady* claim based on newly discovered evidence. Fourth, Williams argues that the

Hamilton County Court of Common Pleas lacked the constitutional authority to convict him. Fifth, Williams asserts that his Indictment was invalid.

For the reasons stated more fully below, the Court finds each of the five arguments unavailing and, accordingly, **OVERRULES** Williams' Objections to the R&R and Objections to the Supplemental R&R.

A. Williams Is A Pro Se Litigant.

In his initial R&R, the Magistrate Judge begins by noting that Williams brings his habeas petition pro se. (R&R, Doc. 19, #629). In his Objections to the R&R, Williams states that his "first [ob]jection is that that of this claim being brought 'pro se.' This is to remove all ambiguity and to clearly reveal the custom of treating the People as Business Trusts." (Doc. 20, #641). The Magistrate Judge responds in the Supplemental R&R, explaining that "pro se" means that Williams is "not represented by an attorney, but is acting on his own. The Court recognizes no 'custom of treating the People as Business Trusts,' and in fact does not understand what that term means in this context." (Doc. 27, #676). In his Objections to the Supplemental R&R, Williams reiterates his argument that he is not "pro se," (Doc. 28, #683–85), but is rather an "individual human person." (*Id.* at #690).

Like the Magistrate Judge, the Court does not follow the distinction Williams is attempting to make here—as "pro se" simply means that Williams is representing himself, rather than being represented by an attorney. To the extent Williams objects that "pro se" has some different meaning, the Court overrules that objection.

B. Williams Waives His Second And Fourth Ground For Relief.

In his Objections to the R&R, Williams waives his second and fourth grounds for relief. With regard to the second claim—violation of the Confrontation Clause—Williams states that "[he] wishes to no[] longer discuss elements that it is obviously irrelevant to the fact he did not rape [the victims]." (Objs., Doc 20, #648). As best the Court can discern, this appears to signal Williams' intent to waive his second ground for relief. Even if that is not Williams' intent, he makes no effort in either his Objections to the R&R or Objections to the Supplemental R&R to respond to the Magistrate Judge's conclusion that his second claim for relief is barred under the procedural default doctrine. Because the Magistrate Judge's conclusion with respect to the second ground for relief is essentially unobjected, and as the Court sees no clear error in the R&R's analysis, the Court DISMISSES Williams' second ground for relief.

Williams also waives his fourth ground for relief—ineffective assistance of counsel based on Feil's failure to advise that certain key witnesses could not be called to testify—in his Objections to the R&R. There, Williams states:

> Ground Four is clearly before this court for we cannot allow this chicanery to fall upon the inhabitants and our posterity, for once the public learns of this act by Richard D. Feil III (which they will soon) it shall violate the confidence that is already under attack in this nation. Petitioner prays for restoration wherefor he cries "Restore me" for the neglect and derelict of Ohio through its agents and reserves his rights pursuant to the herein after [sic] affidavit of truth and verity.

(*Id.*). As with his second claim, Williams' argument here is too vague for the Court to discern any specific objection to the R&R. Thus, the R&R is effectively unobjected.

Because the Court finds no clear error in the Magistrate Judge's analysis, the Court **DISMISSES** Williams' fourth ground for relief. *See Miller*, 50 F.3d at 380.

C. The Court Denies Williams' First And Third Grounds For Relief.

That leaves Williams' first and third grounds for relief from his habeas petition. In the R&R, the Magistrate Judge concludes that these two grounds for relief are effectively one-and-the-same, as they are both ineffective assistance of counsel claims based on Feil's failure to develop the case against Tharps. (Doc. 19, #639). Williams does not object to this conclusion in his Objections to the R&R or Objections to the Supplemental R&R. (*See* Doc. 20; Doc. 28). Thus, for the purposes of this Opinion, the Court will address Williams' first and third grounds for relief jointly. For the sake of brevity, the Court will generally refer to this as the first ground for relief.

In his initial R&R, the Magistrate Judge concludes that Williams' first ground for relief is barred by the procedural default doctrine because (1) Williams failed to raise the claim on direct appeal; (2) Williams failed to appeal when the claim was rejected in his first petition for post-conviction relief; and (3) although Williams had raised the claim as an underlying issue in his two Ohio R. App. P. 26(B) applications for ineffective assistance of appellate counsel, doing so was insufficient to preserve the underlying ineffective assistance of trial counsel claim for merits review. (Suppl. R&R, Doc. 27, #674–75).

In his Objections to the R&R and Objections to the Supplemental R&R, Williams raises two principal arguments against the R&R. First, Williams argues

that his procedural default should be excused because he never received notice that his first petition for post-conviction relief was denied—and thus the Court should evaluate his first ground for relief on the merits. (Objs., Doc. 20, #642). Second, in the alternative, William requests that the Court issue a stay to provide him an opportunity to exhaust his claim through his currently-pending second petition for post-conviction relief. (*Id.* at #649). The Court addresses each of these arguments in turn.

1. Williams' Procedural Default Is Not Excused.

First, Williams argues the Court should excuse his procedural default on his first claim because "the Hamilton County Clerk did not send [him] a notice that [his] first petition to vacate the sentence was denied." (*Id.* at #642). Because he never received notice, Williams states that he was deprived of the opportunity to appeal the denial of his first petition for post-conviction relief. Accordingly, Williams argues that the burden now rests with the state to provide proof "that the proper notice was mailed off[,] or it will be an admission that it in fact was not." (*Id.*).

In his Supplemental R&R, the Magistrate Judge rejects this argument. As he explains, "[t]he State Court Record shows the [denial of the first petition for post-conviction relief] was filed September 12, 2017 .... We are required by Supreme Court precedent to presume the regularity of trial court proceedings. *Walker v. Johnston*, 312 U.S. 275 (1941). It is quite easy to claim, many years after the fact, that the Clerk of Courts did not do her job, but this Court must presume she did unless and until [Williams] proves otherwise." (Suppl. R&R, Doc. 27, #676).

In his Objections to the Supplemental R&R, Williams asks this Court to compel Ohio's state prison administrators to produce the "institutional legal log" of mail received by the two institutions where he was previously incarcerated. (Doc. 28, #680). This discovery, he argues, will allow him to show that the Hamilton County Clerk never sent him a copy of the denial of his first petition for post-conviction relief. (*Id.* at #681).

There are several problems with this theory. As an initial matter, the Court notes that Williams, as a habeas petitioner, is not entitled to any discovery as a matter of course. As the Sixth Circuit has explained, "a district court should grant leave to conduct discovery in habeas corpus proceedings only where specific allegations before the court show reason to believe that the petitioner may, if the facts are more fully developed, be able to demonstrate that he is entitled to relief[.]" *Samatar v. Clarridge*, 225 F. App'x 366, 375 (6th Cir. 2007) (internal modifications and quotation marks omitted).

In this case, Williams did not file any motion for discovery, much less a motion for discovery demonstrating good cause. Had he done so, that motion would have been subject to initial review by the Magistrate Judge, who would have then issued an order granting or denying Williams' request for discovery. Only if that motion was denied would Williams then have had the opportunity to direct any objections to this Court for the undersigned's consideration. Rather than following those procedures, Williams directs his informal request for discovery directly to the undersigned for review in the first instance. For that reason, the Court must deny his request. *See*

Tapke v. Brunsman, 1:09-cv-77, 2010 WL 3522376 (S.D. Ohio Sept. 2, 2010) (rejecting a petitioner's request for discovery where the petitioner had made the request in his reply rather than by filing a motion for discovery).

Accordingly, because Williams has provided no evidence demonstrating that he never received notice of the denial of his first post-conviction petition, the Court agrees with the Magistrate Judge that Williams has failed to demonstrate good cause excusing his procedural default.

Moreover, even if Williams could demonstrate good cause, the Court also finds his ineffective assistance of counsel claim would fail on the merits.

In his initial R&R, the Magistrate Judge does not reach the merits of Williams' first claim for relief because he finds that this claim is procedurally defaulted. (*See* Doc. 19). Nonetheless, in his Objections to the R&R, Williams responds by reiterating many of his arguments that his claim is meritorious. In particular, Williams argues that his "trial attorney had made the promise to call Trent Elliot Tharps to the stand," and states that he submitted affidavits in his second petition for post-conviction relief from friends and relatives attesting to that promise. (Doc. 20, #644). The Supplemental R&R rejects the argument that calling Tharps would have led to a different outcome in Williams' trial—stating that, even if Tharps had been called, "[he] certainly would have been entitled to refuse to answer questions about raping these two victims under the Fifth Amendment." (Doc. 27, #677).

In his Objections to the Supplemental R&R, Williams argues that calling Tharps could have led to a different outcome at trial, because even if Tharps refused

to answer any questions, the physical resemblance he bears to Williams would itself have created reasonable doubt in the minds of jurors.[4] (Doc. 28, #688). Moreover, Williams also argues that he only agreed to go to trial based on Feil's representations that he would call Tharps to the stand—had Feil communicated that he would not do so, Williams indicates that he would have taken the prosecution's plea agreement. (*Id.* at #682–83, 689).

Under *Strickland,* "[t]o establish ineffective assistance of counsel, a defendant must show [1] deficient performance and [2] resulting prejudice." *Collier v. Lindsey*, No. 19-1989, 2020 WL 8678007, at *2 (6th Cir. Oct. 22, 2020) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). To prevail on the former, the petitioner must "show that counsel's representation fell below an objective standard of reasonableness." *Id.* (citation omitted). And to show the latter, the petitioner must "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* (citation omitted). "The *Strickland* standard is highly deferential, and [s]urmounting *Strickland's* high bar is never an easy task." *Washington v. McQuiggin,* 529 F. App'x 766, 770 (6th Cir. 2013) (internal citations and quotation marks omitted).

Here, Williams' ineffective assistance of counsel claim rests on two separate, but closely related, arguments. First, Williams argues that, based on Feil's representations that he would call Tharps to the stand, Williams made the decision

[4] In particular, Williams notes that both he and Tharps are "200 plus pounds," have a "muscular build," the "same skin tone," and "similar facial features." (Suppl. Objs., Doc. 28, #688).

to proceed to trial rather than accept the prosecution's plea deal. (Suppl. Objs., Doc. 28, #689). Second, Williams argues that, had Feil called Tharps as a witness during trial, Williams would not have been convicted. (*Id.* at #688). The Court addresses each of these arguments in turn.

First, Williams argues that trial counsel was ineffective because Feil's misrepresentations that he would call Tharps to testify led Williams to reject the government's plea deal. (*Id.* at #689). To Williams' credit, he is correct that trial counsel may be deemed ineffective if he or she causes the defendant to improperly reject a plea agreement. However, to prevail on such a claim, the petitioner must still show that counsel's advice was objectively unreasonable and prejudicial. With regard to the prejudice inquiry, the Sixth Circuit has explained that

> [i]n the context of a rejected plea offer, [this] inquiry requires the defendant to "show that but for the ineffective advice of counsel there is a reasonable probability that [1] the plea offer would have been presented to the court (*i.e.* that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), [2] that the court would have accepted its terms, and [3] that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that were in fact imposed."

Fritts v. United States, No. 18-5336, 2020 U.S. App LEXIS 16187, at *4 (6th Cir. May 20, 2020) (quoting *Lafler v. Cooper,* 566 U.S. 156, 164 (2012)).

Here, Williams fails to satisfy the first requirement under *Fritts* because he cannot show that he would have accepted the plea offer even if Feil had adequately communicated his trial strategy. Indeed, Williams' own evidence indicates that Feil repeatedly tried to convince him to *accept* the plea offer, but Williams remained intent

on proceeding to trial. For example, an affidavit by Williams' uncle states that Feil "acted as if he was upset because [Williams] did not plead guilty or he was going to do life in prison." (Doc. 14, #472). Similarly, an affidavit by Williams' ex-girlfriend states that Feil was supposed to call Tharps, but "instead of doing what was planned[,] he kept pressuring Christopher to take a plea deal." (*Id.* at #468). This evidence indicates that Williams was resolutely opposed to accepting the plea deal—accordingly, even if Feil had communicated that he did not intend to call Tharps to testify, the Court is not persuaded that it would have changed Williams' decision to proceed to trial. *See Collier,* 2020 WL 8678007, at *2 ("[The petitioner's] bare assertion is insufficient to support his claim that he would have accepted the State's plea offer given that he steadfastly maintained his innocence throughout his criminal proceedings and that he forcefully denounced the prosecution and disparaged the victim."). For that reason, Williams' argument that he would have accepted the government's plea deal had Feil communicated his trial strategy must fail.

Relatedly, Williams argues that his trial counsel, Feil, was ineffective in failing to call Tharps to testify at trial. (Suppl. Objs., Doc. 28, #689). As with all *Strickland* claims, to prevail on this argument, Williams must show that Feil's conduct at trial was both unreasonable and prejudicial. *Collier*, 2020 WL 8678007, at *2. Both of these elements are particularly difficult to satisfy where a petitioner alleges that counsel was ineffective by virtue of failing to call a particular witness. With regard to reasonableness, "[t]he decision to call or not call certain witnesses is exactly the type of strategic decision that the courts expect attorneys to make," and accordingly, courts

afford that decision a significant degree of deference. *Floyd v. Haas,* No. 17-1295, 2017 WL 4182096, at *4 (6th Cir. Sept. 13, 2017). It is also difficult for petitioners to demonstrate the requisite prejudice in these contexts, "because mere unsupported allegations about what testimony potential witnesses might have given are far too speculative." *Talley v. United States,* No. 1:00-cv-74, 2006 WL 3422997, at *9 (E.D. Tenn. Nov. 27, 2006) (collecting cases).

Here, the Court need not reach the second "prejudicial" prong of the *Strickland* analysis, because Williams' claim fails on the first step: reasonableness. At the outset, the Court finds that Williams errs in suggesting that Feil failed to develop the case against Tharps at trial as part of an "alternative suspect defense." (Suppl. Objs., Doc. 28, #688). Indeed, in his Objections to the Supplemental R&R, Williams himself notes that, at trial, the mother of the victims offered "testimony admi[t]ting to dating [Tharps] and allowing him around the alleged victims knowing he was a child pred[a]tor." (*Id.*). Given that Feil *did* present an "alternative suspect defense," Williams must show that *how* Feil presented it—i.e., through the testimony of the victims' mother, rather than by calling Tharps himself to the stand—was unreasonable. On that front, while Williams may be correct that the physical resemblance he bears to Tharps might have aided his case, there are also "obvious strategic reasons not to call [a witness] who would have been hostile to the defense." *Wilburn v. Bauman*, 2:10-cv-14596, 2015 WL 1345255, at *6 (E.D. Mich. Mar. 25, 2015). In choosing not to call Tharps, Feil made exactly "the kind of tactical choice *Strickland* warns against second-guessing." *Id.* Accordingly, because Williams has

failed to rebut the "presumption of reasonableness accorded counsel's actions," *Pillette v. Berghuis*, 408 F. App'x 873, 887 (6th Cir. 2010), his ineffective assistance of counsel claim based on the failure to call Tharps as a witness must fail.

2. The Court Denies Williams' Request For A Stay.

In the alternative, Williams also requests that the Court grant him a stay to allow him to return to state court to pursue his second petition for post-conviction relief. (Objs., Doc. 20, #649).

Williams has requested a stay multiple times during these habeas proceedings. Williams first made this request in his original Habeas Petition (Doc. 8, #65)—a request Magistrate Judge Litkovitz implicitly denied when she ordered an answer and reply. (R&R, Doc. 19, #639). Because Williams did not object when Magistrate Judge Litkovitz denied the request and did not raise the issue in his Reply, the initial R&R concludes that Williams forfeited the request to stay these proceedings. (*Id.*). In his Objections, however, Williams returns to the issue of a stay—stating that he "respectfully recommends and requests a stay and abeyance with an order to the sentencing court to rule on the merits of the second [petition for post-conviction relief.]" (Doc. 20, #649). Williams repeats this request in his Objections to the Supplemental R&R.[5] (Suppl. Objs., Doc. 28, #681).

[5] In his Objections to the Supplemental R&R, Williams also adds a second basis for the stay. He asks that the Court to "grant a stay for new evidence [that] has been discovered regarding the [prosecution] not having all the essential elements to formally bring charges as presented to the Grand Jury for the [o]riginal [c]harges of [r]ape"—a claim Williams presumably seeks an opportunity to exhaust in state court. (Doc. 28, #680). Because Williams attempts to raise this basis for a stay for the first time in his Objections to the Supplemental R&R, the Court rejects it. *Peterson v. Burris*, No. 17–1291, 2017 WL 8289655, at *3 (6th Cir. Dec. 8, 2017).

There are two possible interpretations of the request for a stay in Williams' Objections to R&R and Objections to the Supplemental R&R. First, Williams could be objecting to the R&R's conclusion that he forfeited his Petition's initial request for a stay. If that is Williams' argument, the Court rejects it—agreeing with the R&R that Williams forfeited his request for a stay by failing to object when Magistrate Judge Litkovitz implicitly denied the request and by failing to raise the issue in his Reply. *See* Fed. R. Civ. P. 72(a) ("A party may serve and file objections to [a Magistrate Judge's order on a non-dispositive matter] within 14 days after being served with a copy.").

The second possible interpretation of Williams' argument is that he is instead making a *new* request for a stay, distinct from the initial request in his original Habeas Petition. If that is indeed what Williams is requesting here, the Court must reject it, as "issues raised for the first time in objections to [a] magistrate judge's report and recommendation are deemed waived." *Peterson,* 2017 WL 8289655, at *3.

Even if the Court could consider Williams' request on the merits, the Court would have no choice but to deny the stay. In a § 2254 habeas case, "[a] stay and abeyance should be issued 'only in limited circumstances' where 'the petitioner had good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that he engaged in intentionally dilatory litigation tactics.'" *Bumpas v. Tennessee,* No. 21-5507, 2022 U.S. App. LEXIS 3284, at *4 (6th Cir. Feb. 4, 2022) (quoting *Rhines v. Weber,* 544 U.S. 269, 277–78 (2005)). Moreover, "[i]t is [the petitioner's] burden to make this showing." *Id.*

Here, the Court rejects Williams' request for a stay because his unexhausted first claim for relief cannot succeed in the Ohio state court. Although Williams argues that he may pursue this claim through his second petition for post-conviction relief, as the Magistrate Judge correctly explained in his initial R&R, these efforts are almost certainly futile. "[Williams'] ineffective assistance of trial counsel claim was previously raised in [his] first petition to vacate and its second presentation is therefore barred by *res judicata*. Moreover, the second petition was untimely and the trial court [is] therefore barred by Ohio Revised Code § 2953.22 from exercising jurisdiction over it." (R&R, Doc. 19, #634–35). Accordingly, because Williams has failed to demonstrate that his claims are potentially meritorious, the Court declines to grant his request for a stay.

D. The Court Rejects Williams' *Brady* Claim.

Williams' Objections to the Supplemental R&R also raise a new ground for relief under *Brady v. Maryland,* 273 U.S. 83 (1963). As Williams explains, "there is newly discovered evidence regarding how the alleged victims chang[ed] th[eir] story [three] times[, which] was previously hidden by the prosecution. [Because] this [was] not ... revealed upon [a] motion for discovery[, it] is a *Brady* violation and an obstruction of justice via concealment of evidence." (Suppl. Objs., Doc. 28, #689). This new ground for relief was not set forth in the habeas petition, and thus the Magistrate Judge had no opportunity to address it. Accordingly, it is not properly before the Court, and is overruled on those grounds. *See Biggs v. Coleman*, No. 5:11-cv-292, 2014 WL 185893, at *5 (N.D. Ohio Jan. 15, 2014) (finding that where a petition "assert[s]

new grounds for relief that were not set forth in the habeas petition, and, consequently, the magistrate judge had no opportunity to address them ... [the] new grounds for relief are not properly before the Court") (collecting cases).

E. Williams Forfeits His Other Objections To The R&R By Failing To Address Them In His Objections to the Supplemental R&R.

Finally, the Court turns briefly to other arguments that Williams raised in his Objections to the R&R, and that he forfeited in his Objections to the Supplemental R&R.

First, Williams argues in his Objections to the R&R that "child rape is punishable if one is in fact duly convicted in honor with the ultimate facts and the Constitutional Courts having true jurisdiction. [But, t]he Hamilton[]County Common Pleas Court is not a Constitutional Court recognized by name or definite description in the Constitution ...." (Objs., Doc. 20, #647). The Supplemental R&R rejects this argument as "so far outside the mainstream of habeas corpus law that it is difficult for the Magistrate Judge to understand [it.]" (Doc. 27, #678). Because Williams does not respond to the Magistrate Judge's conclusions on this issue in his Objections to the Supplemental R&R, the Supplemental R&R is effectively unobjected. Seeing no clear error in the Magistrate Judge's analysis, the Court adopts his findings here.

Second, Williams also argues that there is no affidavit for an arrest warrant on the Indictment. (Objs., Doc. 20, #641). The Supplemental R&R rejects this argument, stating that "[t]he very first exhibit in the State Court Record is the grand jury true bill finding probable cause and on which the prosecutor requested a warrant

be issued. A grand jury finding of probable cause satisfies the Constitution as much as an affidavit." (Doc. 27, #676). Again, because Williams does not respond to the Supplemental R&R's conclusions on this point, the Court deems them unobjected. Seeing no clear error in the Supplemental R&R's analysis, the Court accordingly adopts its findings here.

WILLIAMS' OBJECTIONS TO THE STRIKE ORDER

On February 8, 2021, Williams filed what he describes as a Fed. R. Civ. P. 44 Motion to add a document entitled a "Manifesto of Truth and Affidavit of Truth and Understanding" to the record. Williams' six page "Manifesto" is perhaps best described as a meditation on the Constitution and the Uniform Commercial Code. The day after he filed it, the Magistrate Judge issued a notation order striking the Motion and accompanying Manifesto, stating that their contents "have no intelligible relationship to the issues in this habeas corpus case." (Feb. 9, 2021, Notation Order, ECF No. 22).

Williams filed his Objections to the Magistrate Judge's Strike Order on February 26, 2021. (Doc. 25). Because the Magistrate Judge's Strike Order is non-dispositive, his decision "will be reversed only if it is 'clearly erroneous or is contrary to the law.'" *Heid v. Hooks,* No. 2:17-cv-650, 2020 WL 5201082, at *7 (S.D. Ohio Sept. 1, 2020) (quoting Fed. R. Civ. P. 72(a); 28 U.S.C § 636(b)(1)(A)). Under this standard, the Magistrate Judge's factual findings are reversed if they are "clearly erroneous," while his legal findings are reversed if they are "contrary to the law." *Id.*

In his Objections, Williams argues that the Motion and Manifesto serve "as constructive notice of [a] future civil suit and 'Express Color' claim soon and here after [sic] to come holding all act[o]rs accountable and liable for the atrocities done to [Williams]." (Strike Objs., Doc. 25, #668–69). The Court is not sure what this means, and to the extent Williams offers other arguments in his Objections, the Court does not follow them. Because Williams has offered no coherent arguments against the Strike Order, the Court finds the Order is effectively unobjected. Accordingly, the Court declines to reverse the Magistrate Judge's Strike Order. (Doc. 25).

CONCLUSION

For the reasons set forth above, the Court **OVERRULES** Williams' Objections (Doc. 20) to the R&R (Doc. 19) and Objections (Doc. 28) to the Supplemental R&R (Doc. 27). Accordingly, the Court **ADOPTS** the R&R (Doc. 19) and Supplemental R&R (Doc. 27) and **DISMISSES** Williams' Habeas Petition (Doc. 8) **WITH PREJUDICE**. The Court **DIRECTS** the Clerk to **TERMINATE** this matter on the Court's docket. Because the Court finds that reasonable jurists would not disagree with this conclusion, the Court **DENIES** Williams a certificate of appealability. Further, the Court **CERTIFIES** that any appeal of this Opinion would be objectively frivolous and should not be permitted to proceed in forma pauperis.

Further, the Court **OVERRULES** Williams' Objections (Doc. 25) to the Magistrate Judge's Order (Doc. 22) striking his "Manifesto of Truth and Affidavit of Truth and Understanding" (Doc. 21) from the record.

SO ORDERED.

June 2, 2022
DATE

DOUGLAS R. COLE
UNITED STATES DISTRICT JUDGE

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

CHRIS WILLIAMS,

Petitioner, : Case No. 1:20-cv-99

- vs - District Judge Douglas R. Cole
Magistrate Judge Michael R. Merz

WARDEN, Chillicothe
Correctional Institution,

:

Respondent.

REPORT AND RECOMMENDATIONS

This habeas corpus case, brought *pro se* by Petitioner Christopher Williams pursuant to 28 U.S.C. § 2254, is before the Court for decision on the merits. The relevant filings are the Petition (ECF No. 8), the State Court Record (ECF No. 14), the Respondent's Return of Writ (ECF No. 15) and Petitioner's Reply (ECF No. 16).

The Magistrate Judge reference in the case has recently been transferred to the undersigned to help balance the Magistrate Judge workload in the District. Final decision of the case remains with District Judge Cole.

Litigation History

A Hamilton County, Ohio, grand jury indicted Williams on two counts of rape in violation of Ohio Revised Code § 2907.02(A)(1)(b) (Counts 1 & 2)(Indictment, State Court Record, ECF No.

14, Ex. 1). A jury convicted Williams on both counts and he was sentenced to two consecutive life terms of imprisonment. *Id.* at Ex. 14. On appeal the First District Court of Appeals affirmed. *State v. Williams*, 2017-Ohio-8898 (Ohio App. 1st Dist. Dec. 8, 2017). Williams failed to timely appeal to the Supreme Court of Ohio and that court denied his application to file a delayed appeal. (State Court Record, ECF No. 14, Ex. 21).

Williams filed two applications to reopen his direct appeal. *Id.* at Exs. 22 and 23. The First District denied the applications, *Id.* at Ex. 25, and the Supreme Court of Ohio declined jurisdiction. *Id.* at Ex. 28. Williams filed a petition for post-conviction relief, but failed to appeal from the trial court's denial.

Williams filed a second petition for post-conviction relief December 23, 2019, which remained pending at the time the Return of Writ was filed (Return, ECF No. 15, PageID 540).

In his Petition, which Respondent concedes was timely filed, Williams pleads the following grounds for relief:

> **Ground One:** Ineffective assistance of counsel for fraud and errouneous [sic] legal advice about true nature of business with witness.
>
> **Supporting Facts**: Defendant and counsel found out that the live in boyfriend of alleged victims mother was a convicted sex offender with child victims, so trial counsel made a promise to the defendant and his family that he would call the convicted sex offender to the stand and implement an alternative suspect defense to which defendant proceeded to trial based upon that fraudulent agreement only to have defense usurped.
>
> **Ground Two:** Trial court erred when it allowed the jurors to view testimonial taped interviews of the children and failed to mistrial.
>
> **Supporting Facts:** The trial court abused its discretion when it overruled the defendants motion in limine and subsequen [sic] objections at trial, as to the admition [sic] of the alleged victims interviews. The intervies [sic] disclosed sexual contact with the defendant. The purpose of the interviews was not for medical treatment but to collect evidence at trial. Statements are deemed

> testimonial when these is no ongoing emergency only interrogation to establish or prove past events. Thus depriving defendant of a fair trial.
>
> **Ground Three:** Fraud upon the court commited [sic] by trial attorney. Were [sic] attorney lied and thus decieved [sic] the defendant inducing him to trial.
>
> **Supporting Facts:** Defense counsel failed to interview a key witness for the defense even though he made legal assurances to do so evidenced by five affidavits filed by defendants family who spoke with counsel. Defensel [sic] did not inform the defendant of the true nature of the business at hand, thus hindering the defendant from properly granting any type of relief.
>
> **Ground Four:** Ineffective assistance of counsel were [sic] defense counsel was incompetent and unprofessionalness [sic] lead to most harsh sentence.
>
> **Supporting Facts:** Defense counsel was incompetent for not fully informing the defendant of his inability to call key witnesses before trial. Defendant attests that if defense counsel would have informed him that key witnesses would not be available to testify when the deal presented and offered by the state would have been accepted and the defendant would not be serving two consecutive life sentences but a six year sentence on the agreed *Alford* plea.

(Petition, ECF No. 8, PageID 65-70).

Analysis

Ground One: Ineffective Assistance of Counsel: Failure to Call Alternative Suspect Witness

In his First Ground for Relief, Williams claims that the mother of the two victims had a boyfriend who was himself a convicted sex offender with child victims. Williams and his counsel allegedly agreed to call this person as a witness in support of and alternative suspect defense, but the trial attorney failed to do so.

Respondent asserts this Ground for Relief is procedurally defaulted because it was not properly raised in the Ohio courts (Answer, ECF No. 15, PageID 549, *et seq.*).

The procedural default doctrine in habeas corpus is described by the Supreme Court as follows:

> In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an adequate and independent state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause of the default and actual prejudice as a result of the alleged violation of federal law; or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice.

Coleman v. Thompson, 501 U.S. 722, 750 (1991); *see also Simpson v. Jones*, 238 F.3d 399, 406 (6th Cir. 2000). That is, a petitioner may not raise on federal habeas a federal constitutional rights claim he could not raise in state court because of procedural default. *Wainwright v. Sykes*, 433 U.S. 72 (1977); *Engle v. Isaac*, 456 U.S. 107, 110 (1982). "Absent cause and prejudice, 'a federal habeas petitioner who fails to comply with a State's rules of procedure waives his right to federal habeas corpus review.'" *Boyle v. Million*, 201 F.3d 711, 716 (6th Cir. 2000), quoting *Gravley v. Mills*, 87 F.3d 779, 784-85 (6th Cir. 1996); *Murray v. Carrier*, 477 U.S. 478, 485 (1986); *Engle*, 456 U.S. at 110; *Wainwright*, 433 U.S. at 87.

> [A] federal court may not review federal claims that were procedurally defaulted in state court—that is, claims that the state court denied based on an adequate and independent state procedural rule. E.g., *Beard v. Kindler*, 558 U.S. 53, 55, 130 S.Ct. 612, 175 L.Ed.2d 417 (2009). This is an important "corollary" to the exhaustion requirement. *Dretke v. Haley*, 541 U.S. 386, 392, 124 S.Ct. 1847, 158 L.Ed. d 659 (2004). "Just as in those cases in which a state prisoner fails to exhaust state remedies, a habeas petitioner who has failed to meet the State's procedural requirements for presenting his federal claims has deprived the state courts of an opportunity to address" the merits of "those claims in the first instance." *Coleman* [*v. Thompson*], 501 U.S. [722,] 731-732, 111 S.Ct. 2546, 115 L.Ed.2d 640 [(1991)]. The procedural default

> doctrine thus advances the same comity, finality, and federalism interests advanced by the exhaustion doctrine. See *McCleskey v. Zant*, 499 U.S. 467, 493, 111 S.Ct. 1454, 113 L.Ed.2d 517 (1991).

Davila v. Davis, 137 S. Ct. 2058, 2064 (2017). "[A] federal court may not review federal claims that were procedurally defaulted in state courts." *Theriot v. Vashaw*, 982 F.3d 999 (6th Cir. 2020), citing *Maslonka v. Hoffner*, 900 F.3d 269, 276 (6th Cir. 2018) (alteration in original) (quoting *Davila v. Davis*, 137 S. Ct. 2058, 2064 (2017)).

The Sixth Circuit Court of Appeals requires a four-part analysis when the State alleges a habeas claim is precluded by procedural default. *Barton v. Warden, S. Ohio Corr. Facility,* 786 F.3d 450, 464 (6th Cir. 2015), *Guilmette v. Howes,* 624 F.3d 286, 290 (6th Cir. 2010)(*en banc*); *Eley v. Bagley*, 604 F.3d 958, 965 (6th Cir. 2010); *Reynolds v. Berry*, 146 F.3d 345, 347-48 (6th Cir. 1998), *citing Maupin v. Smith*, 785 F.2d 135, 138 (6th Cir. 1986); *accord Lott v. Coyle*, 261 F.3d 594, 601-02 (6th Cir. 2001); *Jacobs v. Mohr*, 265 F.3d 407, 417 (6th Cir. 2001).

> First the court must determine that there is a state procedural rule that is applicable to the petitioner's claim and that the petitioner failed to comply with the rule.
>
> . . . .
>
> Second, the court must decide whether the state courts actually enforced the state procedural sanction, citing *County Court of Ulster County v. Allen*, 442 U.S. 140, 149, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979).
>
> Third, the court must decide whether the state procedural forfeiture is an "adequate and independent" state ground on which the state can rely to foreclose review of a federal constitutional claim.
>
> Once the court determines that a state procedural rule was not complied with and that the rule was an adequate and independent state ground, then the petitioner must demonstrate under *Sykes* that there was "cause" for him to not follow the procedural rule and that he was actually prejudiced by the alleged constitutional error.

Maupin v. Smith, 785 F.2d 135, 138 (6th Cir. 1986); accord, *Hartman v. Bagley,* 492 F.3d 347, 357 (6th Cir. 2007), *quoting Monzo v. Edwards*, 281 F.3d 568, 576 (6th Cir. 2002). A habeas petitioner

can overcome a procedural default by showing cause for the default and prejudice from the asserted error. *Atkins v. Holloway*, 792 F.3d 654, 657 (6th Cir. 2015).

In the Petition, Williams asserts he raised this claim on direct appeal, but no such claim appears in his direct appeal (Appellant's Brief, State Court Record, ECF No. 14, Ex. 15).

Williams also indicates in the Petition that he raised this claim as an underlying claim in his Application to Reopen his appeal under Ohio R. App. P. 26(B). If a petitioner's claims in federal habeas rest on different theories than those presented to the state courts, they are procedurally defaulted. *Williams v. Anderson,* 460 F.3d 789, 806 (6th Cir. 2006); *Lorraine v. Coyle*, 291 F.3d 416, 425 (6th Cir. 2002), *citing Wong v. Money*, 142 F.3d 313, 322 (6th Cir. 1998); *Lott v. Coyle*, 261 F.3d 594, 607, 619 (6th Cir. 2001)("relatedness" of a claim will not save it).

An Ohio App. Rule 26(B) application preserves for habeas review only the ineffective assistance of appellate counsel arguments, not the underlying substantive arguments, e.g., ineffective assistance of trial counsel. *Wogenstahl v. Mitchell*, 668 F.3d 307, 338 (6th Cir. 2012), *citing Lott v. Coyle*, 261 F.3d 594, 612 (6th Cir. 2001). "The *Lott* court explained that permitting an Ohio prisoner to raise a substantive claim in a Rule 26(B) motion "would eviscerate the continued vitality of the procedural default rule; every procedural default could be avoided, and federal court merits review guaranteed, by claims that every act giving rise to every procedural default was the result of constitutionally ineffective counsel." *Id.*

Williams also asserts in the Petition that he has included this claim in his currently-pending second petition for post-conviction relief (Petition to Vacate, State Court Record, ECF No. 14, Ex. 33). That Petition consists largely of attached correspondence with Williams' trial and appellate attorneys, rather than the pleading of claims. Although those proceedings were not yet terminated as of the time the Return of Writ was filed, the response of the State of Ohio shows the ineffective

assistance of trial counsel claim was previously raised in Williams' first petition to vacate and its second presentation is therefore barred by *res judicata*. Moreover, the second petition was untimely and the trial court was therefore barred by Ohio Revised Code § 2953.23 from exercising jurisdiction over it.

Thus Ohio has applicable procedural rules – the limitation on the scope of claims that can be raised in a 26(B) application, *res judicata*, and the statute of limitations on petitions for post-conviction relief. The 26(B) scope limitation has been enforced (Entry, State Court Record, ECF No. 14, Ex. 25). The statute of limitations bar will very likely be enforced against Williams because the State has raised it and the limitation statute is jurisdictional.

These Ohio procedural bars are adequate and independent grounds for state court decisions. No federal authority compels a State to allow use of a remedy designed for ineffective assistance of appellate counsel claims, as Ohio App. R. 26(B) is designed, to also be used for ineffective assistance of trial counsel claims, particularly where, as here, the State has provided a remedy for ineffective assistance of trial counsel claims that depend, as this claim does, on facts outside the direct appeal record. Statues of limitations protect the State's interest in finality of criminal adjudications and thus are adequate.

Finally, the Sixth Circuit has repeatedly upheld Ohio's doctrine of *res judicata* in criminal cases, enunciated in *State v. Perry,* 10 Ohio St. 2d 175 (1967), as an adequate and independent state ground of decision. *Durr v. Mitchell*, 487 F.3d 423, 432 (6th Cir. 2007); *Buell v. Mitchell*, 274 F.3d 337 (6th Cir. 2001); *Coleman v. Mitchell*, 268 F.3d 417 (6th Cir. 2001); *Byrd v. Collins*, 209 F.3d 486, 521-22 (6th Cir. 2000); *Rust v. Zent,* 17 F.3d 155, 160-61 (6th Cir. 1994)(citation omitted); *Van Hook v. Anderson*, 127 F. Supp. 2d 899, 913 (S.D. Ohio 2001).

Williams does not contest Respondent's assertion that he has committed the procedural

defaults of Ground One asserted in the Return[1]. Rather, he purports to offer five instances of cause that he asserts excuse these defaults. However, Williams' arguments to that effect are largely unintelligible.

Williams' Reply commences as follows:

> I christopher-michael:williams, a civilian, Legalis Homo, Suri Juris [NOT PRO SEC[but in Propria Persona,"Without Prejudice" Reseving [sic][aLL] my rights under UCC 1-308 by Special Appearance, am in fact, deed, and truth, and upon "»NEW EVIDENCE*" the Attorney in Fact for Plaintiff-Petitioner-Debtor and assert this action by possesion [sic] of a full right by Natural Law, Common Law, and the U.C,C.[see pages Doc# 14 Filed: 7/30/2020 Page ID# 514-517 400-404, Page ID#374-381, Page ID# 386-399.]

This is just the start. Williams proceeds for twenty-three pages to produce arguments that, for example, his imprisonment is contrary to the Sherman Antitrust Act, the Clayton Act, the Fair Debt Collection Practices Act, the Miller Act, and many other federal statutes and doctrines of law. He concludes by signing the Reply "christopher-michael:Williams UCC 1-308" as attorney-in-fact for Plaintiff [sic] Chris Williams and makes a point of noting that the original is signed in red ink (Reply, ECF No. 16, PageID 588).

It would be useless to attempt to parse all of the completely irrelevant legal assertions Williams makes in the Reply. Undoubtedly they spring from his comments early in the document

> Upon thousands of hours of study since being unlawfuly [sic] imprisoned for lies and non existant [sic] contracts, heading U.S. Titles, case laws, Rules of Procedure, contract law. Natural Law, God's Law and The Uniform Commercial Code it has been found and upheld by the Constitution of The united States of America, that only 3 Jurisdictions exist.

[1] He has, however, refiled the Return as an attachment to his Reply with the word REJECTED written in red ink across the first page (Reply, ECF No. 16-1, PageID 595).

Id. at PageID 568. Suffice it to say that Williams is imprisoned because he was indicted by a grand jury and convicted by a petit jury of committing acts to which the General Assembly of Ohio has attached criminal penalties. He was not subject to the jurisdiction of the Hamilton County Court of Common Pleas by virtue of the natural law, the common law[2], or the Uniform Commercial Code, but by the United States Constitution, which recognizes the sovereignty of Ohio, and by the positive law embodied in the Ohio Revised Code.

Williams cannot obtain relief in this Court in the present habeas corpus action except by proving that he is imprisoned in violation of the Constitution of the United States. 28 U.S.C. § 2254(a); *Wilson v. Corcoran,* 562 U.S. 1 (2010); *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990); *Smith v. Phillips*, 455 U.S. 209 (1982), *Barclay v. Florida,* 463 U.S. 939 (1983). His apparent assertion that his imprisonment violates substantive due process is unsupported by authority: the Supreme Court has never held as a matter of due process that the States cannot punish child rape.

Because Williams has failed to show excusing cause and prejudice, his Fist Ground for Relief should be dismissed with prejudice as procedurally defaulted.

Ground Two: Violation of the Confrontation Clause

In his Second Ground for Relief, Williams asserts the trial court committed constitutional error when it allowed the jury to hear the interviews of the victims conducted upon the first report of the crimes. This is properly understood as a claim under the Confrontation Clause which prohibits admission of out-of-court statements in support of a conviction when the defendant did

[2] Ohio has no common law offenses. *Mitchell v. State*, 42 Ohio St. 383 (1884), *citing Key v. Vattier*, 1 Ohio 132, 144 (1823); *Winn v. State,* 10 Ohio 345 (1841); *Vanvalkenburgh v. State*, 11 Ohio 404 (1842); *Allen v. State,* 10 Ohio St. 287, 301(1859); *Smith v. State*, 12 Ohio St. 466, 469 (1861); *Knapp v. Thomas*, 39 Ohio St. 377, 385 (1883).

not have an opportunity to cross-examine the witness. See *Crawford v. Washington*, 541 U.S. 36 (2004).

Respondent asserts this claim is barred by procedural default as well. Conceding that Williams raised it on direct appeal, Respondent notes that he did not take a timely further appeal to the Supreme Court of Ohio (Return, ECF No. 15, PageID 552). Judgment was entered in the First District Court of Appeals on December 8, 2017 (State Court Record, ECF No. 14, Ex. 17). Under Ohio law Williams was required to file a notice of appeal by forty-five days later, January 22, 2018. His actual Notice of Appeal was not filed until February 14, 2018. *Id.* at Ex. 19. His request to file a delayed appeal was denied by the Supreme Court of Ohio. *Id.* at Ex. 21.

It is well established that the Supreme Court of Ohio's time limit on filing an appeal is an adequate and independent state procedural rule. *Bonilla v. Hurley,* 370 F.3d 494, 497 (6th Cir. 2004). Williams' assertions of excusing cause and prejudice in his reply are intended to apply in blanket fashion to all the asserted procedural defaults. They are as unavailing as to the Second Ground for Relief as they are to the First.

Williams' Second Ground for Relief should therefore be dismissed with prejudice.

Ground Three: Ineffective Assistance of Trial Counsel: Fraud on the Court

In his Third Ground for Relief, Williams re-pleads his First Ground for Relief. It should be dismissed with prejudice on the same basis.

Ground Four: Ineffective Assistance of Trial Counsel: Failure to Advise Key Witnesses Could Not Be Called

In his Fourth Ground for Relief, Williams asserts he received ineffective assistance of trial counsel when his trial attorney failed to advise him that certain key witnesses could not be called to testify, thereby depriving him of the benefit of an offered plea agreement which would have resulted in substantially less prison time than was actually imposed.

Respondent notes that Williams claims to have raised this ground in his second Petition to Vacate and asked in the Habeas Corpus Petition to have this case stayed pending exhaustion. Magistrate Judge Litkovitz did not grant that request and implicitly denied it when she ordered an answer and a reply. Respondent argues there is not good cause for a stay under governing precedent (Answer, ECF No. 15, PageID 556, citing *Rhines v. Weber*, 544 U.S. 269 (2005)). Williams did not renew his request for a stay and his Reply says nothing on this point. The Magistrate Judge finds Ground Four is procedurally defaulted on the same basis as Ground One: this claim could have been raised in Williams' first petition for post-conviction relief; because it was not, it is now barred by the *Perry res judicata* doctrine. Ground Four should therefore be dismissed with prejudice.

Conclusion

Based on the foregoing analysis, the Magistrate Judge respectfully recommends that the Petition be dismissed with prejudice. Because reasonable jurists would not disagree with this conclusion, it is also recommended that Petitioner be denied a certificate of appealability and that the Court certify to the Sixth Circuit that any appeal would be objectively frivolous and should not

be permitted to proceed *in forma pauperis*.

January 15, 2021.

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. Because this document is being served by mail, three days are added under Fed.R.Civ.P. 6, but service is complete when the document is mailed, not when it is received. 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. 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. #

NOTICE REGARDING RECORD CITATIONS#

The attention of all parties is called to S. D. Ohio Civ. R. 7.2(b)(5) which provides:

> (5) **Pinpoint Citations**. Except for Social Security cases, which must comply with S.D. Ohio Civ. R. 8.1(d), all filings in this Court that reference a prior filing must provide pinpoint citations to the PageID number in the prior filing being referenced, along with a brief title and the docket number (ECF No. ___ or Doc. No. ___) of the document referenced.

The Court's electronic filing system inserts in all filings hyperlinks to the place in the record which has been cited following this Rule. However, as with most computer systems, the CM/ECF program cannot read pinpoint citations which do not follow the Rule precisely. For example, the first pinpoint citation in ODRC's Reply reads "Plaintiff argues that he could not bring this action until "administrative remedies as (sic) are exhausted (sic)." (Doc. 80, PageId# 987)." The correct citation would have been Doc. No. 80, PageID 987." Because Defendant added the "#" symbol, the program failed to inset a hyperlink. Use of this software is mandated by the Judicial Conference of the United States and cannot be locally modified. **The parties are cautioned to comply precisely with S. D. Ohio Civ. R. 7.2(b)(5) in any further filings.**

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

CHRIS WILLIAMS,

Petitioner, : Case No. 1:20-cv-99

- vs - District Judge Douglas R. Cole
Magistrate Judge Michael R. Merz

WARDEN, Chillicothe
Correctional Institution,

:

Respondent.

SUPPLEMENTAL REPORT AND RECOMMENDATIONS

In this habeas corpus case, *pro se* Petitioner Christopher Williams seeks relief from his conviction on two counts of rape of two different children under the age of ten and his consequent sentence to two consecutive terms of life imprisonment. The Petition pleads four grounds for relief (ECF No. 8). The Magistrate Judge has recommended that all four grounds be dismissed (Report and Recommendations, "Report," ECF No. 19), Petitioner has objected (ECF No. 20), and District Judge Cole has recommitted the case for further analysis (ECF No. 23).

The Report's Analysis

Ground One alleges ineffective assistance of trial counsel for failure to call as a witness the live-in boyfriend of the mother of the two victims who allegedly has also been convicted of sexual abuse of minors. The Report found this Ground procedurally defaulted because (1)

Petitioner did not raise it on direct appeal, (2) raising it as an underlying issue in his Ohio App. R. 26(B) Application for Reopening did not preserve it for merits review, (3) he claimed ineffective assistance of trial counsel in his first petition for post-conviction relief, but did not appeal from denial of that petition (Report, ECF No. 19, PageID 631-35). In his Reply, Williams did not deny these procedural defaults, but offered asserted cause to excuse them. The Report found Williams' arguments in support of cause to be "largely unintelligible." *Id.* at PageID 636.

Ground Two alleges violation of the Confrontation Clause by admission of statements made by the victims when they were first examined by medical personnel after reporting the abuse. The Report found this Ground procedurally defaulted by failure to appeal to the Supreme Court of Ohio on direct appeal. *Id.* at PageID 637-38.

Ground Three repleads Ground One and the Report recommended it be dismissed on the same basis. *Id.* at PageID 638.

Ground Four claims ineffective assistance of trial counsel for failure to advise Williams that certain key witnesses could not be called to testify. The Report recommended this claim be dismissed because it could have been raised in Williams' first petition for post-conviction relief but was not. *Id.* at PageID 639.

Petitioner's Objections

Petitioner first objects that the Report labels him as proceeding *pro se* (Objections, ECF No. 20, PageID 641). Instead, he says,

> Continuing to assert my status as Sui juris as a living inhabitant, and not a person as described in the law definition as "For one's own behalf; in person" and person meaning" may include labor organizations, partnerships, associations, corporations, legal

> representatives, trustees etc.,". For the scope and delineation of the term "Person" is necessary for determining [to] whom the Fourteenth Amendment of Constitution affords protection since this amendment expressly applies to "Person". Whereby the first rejection [of the Report] is that of this claim being brought "pro se." This is to remove all ambiguity and to clearly reveal the custom of treating the People as Business Trusts.

(Objections, ECF No. 20, PageID 641).

The Court recognizes Petitioner as an individual human person who is entitled to the protections of the Fourteenth Amendment. The meaning to this Court of labeling the matter as "pro se" is that Petitioner is not represented by an attorney, but is acting on his own behalf. The Court recognizes no "custom of treating the People as Business Trusts," and in fact does not understand what that term means in this context.

Petitioner's next objection is that there is no affidavit for an arrest warrant on the Indictment (Objections, ECF No. 20, PageID 641). The very first exhibit in the State Court Record is the grand jury true bill finding probable cause and on which the prosecutor requested a warrant be issued. A grand jury finding of probable cause satisfies the Constitution as much as an affidavit.

Petitioner's next objection is that the Hamilton County Clerk of Courts did not send him a copy of the denial of his first post-conviction petition; he now demands proof of mailing. The State Court Record shows the relevant entry was filed September 12, 2017 (ECF No. 14, Ex. 30). We are required by Supreme Court precedent to presume the regularity of trial court proceedings. *Walker v. Johnston*, 312 U.S. 275 (1941). It is quite easy to claim, many years after the fact, that the Clerk of Courts did not do her job, but this Court must presume she did unless and until Petitioner proves otherwise.

Petitioner admits that he did not check the docket until his "fiancé at that time" in January 2019 learned that Judge Ruehlman had denied his petition (Objections, ECF No. 20, PageID 642).

Petitioner claims that under UCC 1-201 Respondent must prove he received the decision. *Id.* UCC 1-201 has no application to this habeas corpus case.

Petitioner reiterates his argument on the merits: that his trial attorney provided ineffective assistance of trial counsel by not calling "convicted child rapist Trent Elliott Tharps" to the stand. *Id.* at PageID 643. This would allegedly have been in support of an alternative suspect defense which is not cogent. Is Williams alleging the two child victims would have identified Tharps instead of him as the perpetrator? Tharps certainly would have been entitled to refuse to answer questions about raping these two victims under the Fifth Amendment. Is that perhaps why he wasn't called to testify?

In rejecting Ground One, the Magistrate Judge also wrote:

> Williams also asserts in the Petition that he has included this claim [Ground One] in his currently-pending second petition for post-conviction relief (Petition to Vacate, State Court Record, ECF No. 14, Ex. 33). That Petition consists largely of attached correspondence with Williams' trial and appellate attorneys, rather than the pleading of claims.

(Report, ECF No. 19, PageID 634). Williams objects that his second post-conviction petition is supported by affidavits of five persons (Objections, ECF No. 20, PageID 644). The Petition as filed has attached to it correspondence between Williams and his attorneys and criminal papers related to Tharps (State Court Record, ECF No. 14, PageID 346-73). Beginning at PageID 374, there are various UCC forms apparently prepared by Petitioner involving something called the Christopher Michaels Williams Trust. Beginning at PageID 382 there is a document purporting to name Ciera Melissa Hidea Jones as an attorney-in-fact for Petitioner. At PageID 386 begins a fourteen-page Security Agreement, a common-law copyright notice, and a hold harmless agreement. There follows six pages of print outs from Rapsheets.org about Tharps. There are several pages of medical records with redacted names. At PageID 486 begins an Affidavit of Ciera

Jones who avers that she cohabited with the Petitioner for eight years and they had three children together. She claims she was in meetings with the trial attorney and it was part of the plan to call Tharps. Three other affidavits attest to the fact that Tharps was not called. Other powers of attorney to Ciera Jones complete the filing. On these affidavits Williams rests his case that Tharps is the perpetrator of the crimes of which he stands convicted.

Williams continues with allegations he has been forced into an Article II court as a business trust (Objections, ECF No. 20, PageID 646). He claims the "Hamilton County Court of Common Pleas is not a Constitutional Court recognized by name or definite description in Constitution." *Id.* He claims Ohio forced on him an

> invisible admiralty adhesion contract at birth to place him in a trust with trustees to place insurance upon him and pledge him for the debt of the State of Ohio without full disclosure and contemporaneous just compensation forcing him to be a commercial entity and a corporate citizen in business and liability not in his best interest.

Id. at PageID 647. He concludes by asking this Court for a "stay and abeyance" and an order to the Hamilton County Court of Common Pleas to decide his second post-conviction petition on the merits. *Id.* at PageID 649.

Petitioner's Objections are so far outside the mainstream of habeas corpus law that it is difficult for the Magistrate Judge to understand them. It is clear that Williams raised his ineffective assistance of trial counsel claim in his first post-conviction petition and that he did not appeal from denial of that petition. He claims that is because he was never sent a copy of the decision. However, the presumption of regularity puts the burden on Williams to prove that he was not sent a copy of the decision and he has produced no proof of that asserted fact.

Conclusion

Williams' Objections are without merit and should be overruled. The Magistrate Judge therefore again respectfully recommends the Petition be dismissed with prejudice. Because reasonable jurists would not disagree with this conclusion, it is also recommended that Petitioner be denied a certificate of appealability and that the Court certify to the Sixth Circuit that any appeal would be objectively frivolous and should not be permitted to proceed *in forma pauperis*.

March 1, 2021.

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. Because this document is being served by mail, three days are added under Fed.R.Civ.P. 6, but service is complete when the document is mailed, not when it is received. 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. 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. #

UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

Chris Williams
Plaintiff
v.
Warden, Chillicothe Correctional Institution
Defendant

Civil Action No. 1:20-cv-99

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☐ the plaintiff *(name)* _____ recover from the defendant *(name)* _____ the amount of _____ dollars ($ _____), which includes prejudgment interest at the rate of _____ %, plus post judgment interest at the rate of _____ % per annum, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____ _____ recover costs from the plaintiff *(name)* _____ _____ .

☒ other: Williams' Objections (Doc. 20) to the R&R (Doc. 19) and Objections (Doc. 28) to the Supplemental R&R (Doc. 27) are overruled. Accordingly, the Court adopts the R&R (Doc. 19) and Supplemental R&R (Doc. 27) and dismisses with prejudice Williams' Habeas Petition (Doc. 8). Because the Court finds that reasonable jurists would not disagree with this conclusion, the Court denies Williams a certificate of appealability. Further, the Court certifies that any appeal of this Opinion would be objectively frivolous and should not be permitted to proceed in forma pauperis. Further, the Court overrules Williams' Objections (Doc. 25) to the Magistrate Judge's Order (Doc. 22) striking his "Manifesto of Truth and Affidavit of Truth and Understanding" (Doc. 21) from the record.

This action was *(check one)*:

☐ tried by a jury with Judge _____ presiding, and the jury has rendered a verdict.

☐ tried by Judge _____ without a jury and the above decision was reached.

☐ decided by Judge _____ on a motion for _____ _____ _____ .

Date: 6/2/22

CLERK OF COURT

Signature of Clerk or Deputy