APPENDIX A

No. 22-3910

FILED
Aug 9, 2023
DEBORAH S. HUNT, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TRAMAINE EDWARD MARTIN,

Petitioner-Appellant,

v.

WARDEN JAY FORSHEY,

Respondent-Appellee.

ORDER

Before: SUTTON, Chief Judge; WHITE and THAPAR, Circuit Judges.

Tramaine Edward Martin petitions for rehearing of this court's order of June 7, 2023, denying his application for a certificate of appealability.

We have reviewed the petition and conclude that this court did not misapprehend or overlook any point of law or fact when entering our previous order. *See* Fed. R. App. P. 40(a)(2).

We therefore **DENY** the petition for rehearing.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX B

No. 22-3910

FILED
Jun 7, 2023
DEBORAH S. HUNT, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TRAMAINE EDWARD MARTIN,

Petitioner-Appellant,

v.

WARDEN JAY FORSHEY,

Respondent-Appellee.

ORDER

Before: McKEAGUE, Circuit Judge.

Tramaine Edward Martin, a pro se Ohio prisoner, applies for a certificate of appealability ("COA") in his appeal from the denial of his 28 U.S.C. § 2254 petition for a writ of habeas corpus. *See* 28 U.S.C. § 2253(c)(1)(A). Martin also moves to proceed in forma pauperis.

In 2017, after a bench trial, Martin was found guilty of attempted rape, gross sexual imposition, and kidnapping with a sexual-motivation specification involving the 10-year-old niece of his former girlfriend. The trial court found him not guilty of rape and another count of gross sexual imposition. The court determined that the attempted-rape and gross-sexual-imposition convictions merged into the kidnapping conviction, for which the court sentenced Martin to 10 years to life with the possibility of parole after 10 years and required him to register as a sex offender. His direct appeal was unsuccessful. *State v. Martin*, No. 106038, 2018 WL 2149730 (Ohio Ct. App. May 10, 2018), *perm. app. denied*, 106 N.E.3d 66 (Ohio 2018). He filed two petitions for state post-conviction relief, both of which did not succeed. *See State v. Martin*, No. 108189, 2019 WL 5678599 (Ohio Ct. App. Oct. 31, 2019).

Martin then filed this § 2254 petition, asserting these six claims: (1) the affidavit supporting a search warrant did not establish probable cause to issue the warrant, and DNA evidence should have been suppressed; (2) his constitutional speedy-trial rights were violated;

(3) his state-law speedy-trial rights were violated, resulting in a due-process and equal-protection violation; (4) the evidence was insufficient to support his convictions; (5) his term of imprisonment is not authorized by state law; and (6) his sentence violated the Double Jeopardy Clause. The district court denied the petition and declined to issue a COA, holding that claims one and six were noncognizable, claims two and four lacked merit, and claims three and five were both noncognizable and without merit. *Martin v. Forshey*, No. 1:18 CV2381, 2022 WL 2286213 (N.D. Ohio June 24, 2022). Martin seeks a COA for all but claim three.

A court may issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "That standard is met when 'reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner,'" *Welch v. United States*, 578 U.S. 120, 127 (2016) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)), or when "jurists could conclude the issues presented are adequate to deserve encouragement to proceed further," *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Habeas relief may be granted on claims that were adjudicated on the merits in state court only if that adjudication (1) "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or (2) "was based on an unreasonable determination of the facts." 28 U.S.C. § 2254(d).

Martin first asserted that the search warrant was not supported by probable cause and that the trial court erroneously denied his motion to suppress DNA evidence obtained during his arrest. The district court denied this claim under *Stone v. Powell*, 428 U.S. 465, 482 (1976), which held that when "the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, the Constitution does not require that a state prisoner be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." Ohio provides criminal defendants with the opportunity to move to suppress evidence obtained in violation of the Fourth Amendment, *see* Ohio Criminal Rule 12(C)(3), and Martin in fact availed himself of it by filing a suppression motion. Thus, no reasonable jurist could debate the district court's denial of this claim under *Powell*.

Martin next claimed that the delay in bringing him to trial violated the Speedy Trial Clause of the Sixth Amendment. The district court denied this claim because Martin was tried within seven months of being indicted and that delay is neither "uncommonly long" nor, because it was within one year, "presumptively prejudicial." *Brown v. Romanowski*, 845 F.3d 703, 714 (6th Cir. 2017) (quoting *Doggett v. United States*, 505 U.S. 647, 651 (1992)). Martin argues that the state court and district court applied the wrong Supreme Court precedent in denying his claim, but they did not, and he has not made a substantial showing that the modest delay violated any clearly established federal law.

In his fourth claim, Martin asserted that the evidence was insufficient to support his conviction for kidnapping and thus also his merged convictions for attempted rape and gross sexual imposition. On an insufficient-evidence claim, the reviewing court must determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

Martin argued that the State did not present evidence that he "restrain[ed] the liberty of the" victim, as required to convict for kidnapping with a sexual motivation specification. Ohio Rev. Code § 2905.01(A). But the Ohio Court of Appeals noted that the victim "testified that Martin got into the bed she shared with her cousin, pulled down her pants, and attempted to put his 'private part' in her from behind while holding down her arms." *Martin*, 2018 WL 2149730, at *9. Martin then "proceeded to put his tongue on her private area before pulling her pants up and leaving the room." *Id.* The state court noted that the victim's mother, aunt, and cousin corroborated her testimony and that Martin's DNA was detected on the victim's underwear. *Id.* at *2, *9. Martin argues that the state courts "relied solely" on the victim's testimony, but even if that were accurate, "this Court has long held that the testimony of the victim alone is constitutionally sufficient to sustain a conviction." *Tucker v. Palmer*, 541 F.3d 652, 658 (6th Cir. 2008). Martin also contends that the trial court ignored evidence that he believes undermined the victim's testimony. Yet he makes no showing that the court overlooked any evidence, and a federal

habeas court may "not reweigh the evidence or redetermine the credibility of the witnesses whose demeanor has been observed by the trial court." *Matthews v. Abramajtys*, 319 F.3d 780, 788 (6th Cir. 2003). Thus, no reasonable jurist could debate the district court's denial of this claim.

In his fifth claim, Martin asserted that state law did not authorize the stipulation in his sentence that he is not eligible for parole for 10 years. The Ohio Court of Appeals rejected this argument as "unpersuasive." *Martin*, 2018 WL 2149730, at *10. The district court denied Martin's claim because a state court's interpretation of state law is binding on federal habeas review, *Martin*, 2022 WL 2286213, at *5 (citing *Bradshaw v. Richey*, 564 U.S. 74, 76 (2005)), and habeas relief cannot be granted based on errors of state law, *id.* (citing *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991)). Because Martin did not make a substantial showing of a "violation of the Constitution or law or treaties of the United States," 28 U.S.C. § 2254(a), no reasonable jurist could debate the denial of this claim.

Finally, Martin claimed that his sentence for kidnapping violated the prohibition against double jeopardy because it included an additional requirement that he register as a sex offender based on the merged offenses of attempted rape and gross sexual imposition. But because Ohio's sex-offender registration is a collateral consequence of conviction, it does satisfy the requirement in § 2254(a) that a petitioner must be "in custody" to obtain habeas relief. *See Hautzenroeder v. Dewine*, 887 F.3d 737, 741 (6th Cir. 2018).

For these reasons, Martin's COA application is **DENIED**, and his motion to proceed in forma pauperis is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 22-3910

TRAMAINE EDWARD MARTIN,

Petitioner-Appellant,

v.

WARDEN JAY FORSHEY,

Respondent-Appellee.

Before: McKEAGUE, Circuit Judge.

JUDGMENT

THIS MATTER came before the court upon the application by Tramaine Edward Martin 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

APPENDIX C

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

TRAMAINE EDWARD MARTIN,	CASE NO. 1:18 CV 2381
Petitioner,	
v.	JUDGE JAMES R. KNEPP II
WARDEN JAY FORSHEY,	
Respondent.	**MEMORANDUM OPINION AND ORDER**

BACKGROUND

Pro se Petitioner Tramaine Edward Martin ("Petitioner"), a prisoner in state custody, filed a Petition seeking a writ of habeas corpus under 28 U.S.C. § 2254. On February 8, 2022, Magistrate Judge William H. Baughman issued a Report and Recommendation ("R&R") recommending the Petition be denied in part and dismissed in part. (Doc. 32). Following this Court's grant of an extension of time, on April 18, 2022, Petitioner filed his Objections thereto (Doc. 36), and on June 24, 2022, the Court overruled Petitioner's objections, adopted the R&R, and denied and dismissed the petition.

Petitioner has now filed a Motion to Alter or Amend Judgment. (Doc. 39). For the reasons discussed below, the motion will be denied.

STANDARD OF REVIEW

"A court may grant a Rule 59(e) motion to alter or amend if there is: (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice." *Intera Corp. v. Henderson*, 428 F.3d 605, 620 (6th Cir. 2005). "A motion under Rule 59(e) is not an opportunity to re-argue a case. Thus, parties should not use them

to raise arguments which could, and should, have been made before judgment issued." *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998) (citation omitted). It is also well-established in the Sixth Circuit that a Rule 59(e) motion is "not a substitute for appeal and does not allow the unhappy litigant to reargue the case." *Bollenbacher v. Comm'r of Soc. Sec.*, 621 F. Supp. 2d 497, 501 (N.D. Ohio 2008) (discussing Rule 59(e)).

DISCUSSION

Petitioner contends this Court made clear errors of law as to the analysis of each of his grounds for habeas relief. Upon review, the Court denies Petitioner's Motion to Alter or Amend.

First, Petitioner argues that the Court erred in consideration of his Ground One Fourth Amendment claim because presentation of his claim was frustrated by failure of the state procedural mechanism. (Doc. 39, at 2) (citing *Riley v. Gray*, 674 F.2d 522, 526 (6th Cir. 1982)). Petitioner contends – as he did before – that the search warrant was based on false evidence offered by the prosecution. But this does not show a failure of the state's procedural mechanism for considering Fourth Amendment claims. *See Streets v. Chapman*, 2018 WL 4492254, at *9 (E.D. Mich.) ("Petitioner's claim that the prosecutor used false evidence to obtain the arrest warrant is barred by *Stone v. Powell*[.]").

Second, Petitioner contends the Court erred in its evaluation of his Ground Two constitutional speedy trial claim. (Doc. 39, at 3). Upon review, the Court finds Petitioner has not pointed to any clear error.

Third, Petitioner contends the Court erred in evaluating his Ground Four sufficiency of the evidence claim. Petitioner's objections to the "double deference" standard applied to sufficiency claims on habeas review is not well-taken. This is the standard. *See, e.g., Snyder v. Marion Correctional Inst. Warden*, 608 F. App'x 325, 327 (6th Cir. 2015) (where a petitioner's "claims

arise in the context of a § 2254 petition, [a court's] analysis must be refracted through yet another filter of deference"). Petitioner continues to ask the Court to re-weigh the facts. But findings of fact made by the state court are presumed correct unless a petitioner shows, by clear and convincing evidence, that those facts are erroneous. 28 U.S.C. § 2254(e)(1); *Moore v. Mitchell*, 708 F.3d 760, 775 (6th Cir. 2013). Petitioner specifically argues there is insufficient evidence to support the restraint of liberty element of a kidnapping conviction under Ohio Revised Code 2901.01(A). But the state appellate court specifically found Petitioner "attempted 'stick his private part' into K.B. from behind while holding down her arms". *State v. Martin*, 2018-Ohio-1843, ¶ 7 (Ohio Ct. App.). The state appellate court's decision that the testimony was sufficient to support the kidnapping conviction was neither contrary to nor an unreasonable application of federal law. 28 U.S.C. § 2254(d).

Fourth, Petitioner contends this Court clearly erred in consideration of his Ground Five sentencing claim. He contends his sentence was improper under Ohio law and that the Court failed to answer "the federal due process question". (Doc. 39, at 8). As previously stated, however, the state court found the sentence proper under Ohio law and this Court is bound by that determination. Petitioner has not demonstrated a due process violation. *See Worrell v. Sheets*, 2009 WL 2591667, at *1 (S.D. Ohio) ("Because it cannot be said that Ohio law prohibits imposition of consecutive sentences on petitioner, it cannot be said that petitioner thereby was denied his constitutional right to due process. In short, the federal due process clause simply is not implicated when a state court imposes consecutive sentences in a manner that appears to be authorized under state law.").

Fifth, and finally, Petitioner contends the Court committed a clear error of law in evaluating his double jeopardy claim related to his sex offender registration. He contends that *Hautzenroeder v. DeWine*, 887 F.3d 737 (6th Cir. 2018) is distinguishable because the petitioner there filed her §

2254 petition after she was no longer in custody. But to obtain habeas relief under 28 U.S.C. § 2254, Petitioner must show he is "in custody pursuant to the judgment of a State court". 28 U.S.C. § 2254(a); *see also* 28 U.S.C. § 2241(c)(3) ("The writ of habeas corpus shall not extend to a prisoner unless . . . [h]e is in custody in violation of the Constitution or laws or treaties of the United States"). The Supreme Court has interpreted this "statutory language as requiring that the habeas petitioner be 'in custody' *under the conviction or sentence under attack* at the time his petition is filed." *Maleng v. Cook*, 490 U.S. 488, 490-91 (1989) (per curiam) (emphasis added). Here, Petitioner is "in custody", but he is not "in custody" pursuant to the sex offender registration requirements he seeks to attack. *See Leslie v. Randle*, 296 F.3d 518, 511 (6th Cir. 2002) ("Although Leslie is currently incarcerated, he is not seeking relief from the conviction or sentence upon which his confinement is based."). As such, the Court finds Petitioner has not pointed to any clear error in the Court's prior analysis. *Cf. Denoma v. Ohio Dep't of Rehab. & Corr.*, 2020 WL 9258404, at *7 (N.D. Ohio) ("Further, although he was in custody at the time he filed his petition, the petition does not allege that the criminal conviction or sentence were 'in violation of the Constitution or laws or treaties of the United States.' Instead, he challenges his designation as a sexually-oriented offender and the related SORNA reporting requirements, which are collateral consequences of his conviction that do not satisfy the 'in custody' requirement for federal habeas corpus relief."), *report and recommendation adopted*, 2021 WL 1185481.

In sum, having carefully reviewed Petitioner's motion, as well as the R&R, Petitioner's previously-filed objections and the Court's prior rulings, the Court finds Petitioner has not pointed to anything satisfying the Rule 59(e) standard. Nothing in Petitioner's motion convinces the Court that its prior decision was clearly erroneous. To the extent Petitioner disagrees with this Court's prior determination, his proper remedy is an appeal.

CONCLUSION

For the foregoing reasons, good cause appearing, it is

ORDERED that Petitioner's Motion to Alter or Amend Judgment (Doc. 39), be and the same hereby is DENIED; and the Court

FURTHER CERTIFIES that an appeal from this decision could not be taken in good faith. 28 U.S.C. § 1915(a)(3).

s/ James R. Knepp II
UNITED STATES DISTRICT JUDGE

APPENDIX D

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

TRAMAINE EDWARD MARTIN,	CASE NO. 1:18 CV 2381
Petitioner,	
v.	JUDGE JAMES R. KNEPP II
WARDEN JAY FORSHEY,	
Respondent.	**MEMORANDUM OPINION AND ORDER**

INTRODUCTION

Pro se Petitioner Tramaine Edward Martin ("Petitioner"), a prisoner in state custody, filed a Petition seeking a writ of habeas corpus under 28 U.S.C. § 2254. (Doc. 1). This case was referred to Magistrate Judge William H. Baughman, Jr. for a Report and Recommendation ("R&R") regarding the Petition under Local Civil Rule 72.2(b)(2). On February 8, 2022, Judge Baughman issued an R&R recommending the Petition be denied in part and dismissed in part. (Doc. 32). Following this Court's grant of an extension of time, on April 18, 2022, Petitioner filed his Objections thereto. (Doc. 36). The Court has jurisdiction over the Petition under 28 U.S.C. § 2254(a). For the reasons set forth below, the Court OVERRULES Petitioner's Objections, ACCEPTS the R&R, and DENIES and DISMISSES the Petition.

BACKGROUND

The present petition arises out of Petitioner's bench trial conviction on charges of attempted rape, gross sexual imposition, and kidnapping with a sexual motivation specification. *State v Martin*, 2018-Ohio-1843, at ¶¶ 1, 5, 14 (Ohio Ct. App.).

In his habeas Petition, Petitioner raises six grounds for relief:

> **Ground One:** An affidavit that makes mere conclusions that a crime was committed, a statement that the[] defendant committed it, and lacking any indicia of probable cause for an independent determination lacks Fourth Amendment standings.
>
> **Ground Two**: Petitioner was denied the constitutional right to a speedy trial when there existed an unreasonable period of delay, no reasonable justification for delay, asserted right at onset of case, and incurs substantial prejudice from delay.
>
> **Ground Three**: Petitioner was denied his statutory right to a speedy trial when he wasn't brought to trial within the limits prescribed by O.R.C. § 2945.71 et seq., thereby denying due process and equal protection of the law.
>
> **Ground Four**: Conviction(s) is/are not sustained by sufficient evidence.
>
> **Ground Five:** The term of imprisonment is not authorized by Ohio law, therefore it is void ab initio and must be vacated.
>
> **Ground Six:** To impose penalties for allied offenses of similar import constitutes double punishment and infringes upon double jeopardy protections.

(Doc. 1, at 7-12).

The R&R recommends (1) Ground One be dismissed as non-cognizable under *Stone v. Powell*, 428 U.S. 465 (1976) and – to the extent it is presented solely as a question of Ohio law – as non-cognizable; (2) Ground Two be denied on the merits; (3) Ground Three – to the extent it raises an issue of Ohio law – be dismissed as non-cognizable, and – to the extent it raises a due process claim – be denied on the merits; (4) Ground Four be dismissed on the merits; (5) Ground

Five be dismissed as non-cognizable and without merit; and (6) Ground Six be dismissed as non-cognizable.

STANDARD OF REVIEW

When a party objects to the Magistrate Judge's R&R, the district judge "must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3).

This Court adopts all uncontested findings and conclusions from the R&R and reviews *de novo* those portions of the R&R to which specific objections are made. 28 U.S.C. § 636(b)(1); *Hill v. Duriron Co.*, 656 F.2d 1208, 1213–14 (6th Cir. 1981). To trigger *de novo* review, objections must be specific, not "vague, general, or conclusory." *Cole v. Yukins*, 7 F. App'x 354, 356 (6th Cir. 2001). This specific-objection requirement is meant to direct this Court to "specific issues for review." *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991). "A general objection, or one that merely restates the arguments previously presented and addressed by the Magistrate Judge, does not sufficiently identify alleged errors in the [R&R]" to trigger *de novo* review. *Fondren v. American Home Shield Corp.*, 2018 WL 3414322, at *2 (W.D. Tenn. 2018). General objections trigger only clear-error review. *Equal Employment Opportunity Comm'n v. Dolgencorp, LLC*, 277 F. Supp. 3d 932, 965 (E.D. Tenn. 2017), *aff'd*, 899 F.3d 428 (6th Cir. 2018).

Pursuant to 28 U.S.C. § 2254(d), as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a writ of habeas corpus may not be granted unless the state court proceedings: (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United

States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. 28 U.S.C. § 2254(d).

Further, a federal court may review a state prisoner's habeas petition only on grounds that the challenged confinement violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). A federal court may not issue a writ of habeas corpus "on the basis of a perceived error of state law." *Pulley v. Harris*, 465 U.S. 37, 41 (1984). Because state courts are the final authority on state-law issues, a federal habeas court must defer to and is bound by the state court's rulings on such matters. *See Estelle v. McGuire*, 502 U.S. 62, 63 (1991) ("[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions."); *see also Cristini v. McKee*, 526 F.3d 888, 897 (6th Cir. 2008) ("[A] violation of state law is not cognizable in federal habeas [ ] unless such error amounts to a fundamental miscarriage of justice or a violation of the right to due process in violation of the United States Constitution.").

DISCUSSION

Petitioner objects to the R&R's recommendations on Grounds One, Two, Four, Five, and Six. *See* Doc. 36. The Court addresses each in turn.

Ground One

In Ground One, Petitioner contends the affidavit supporting a search warrant was not supported by probable cause and the trial court therefore erred in denying his motion to suppress certain evidence. The R&R accurately sets forth the well-established principle from *Stone v. Powell*, that "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced in his trial." 428 U.S. 465, 494 (1976); *see also Riley v. Gray*, 674 F.2d 522, 526 (6th Cir. 1982) (holding that

opportunity for full and fair litigation of a Fourth Amendment claim exists where state procedural mechanism presents an opportunity to raise the claim, and presentation of the claim was not frustrated by a failure of that mechanism).

Two considerations underpin *Powell*'s general rule against federal habeas review of Fourth Amendment claims: first, the "key purpose of federal habeas corpus is to free innocent prisoners[, and] whether an investigation violated the Fourth Amendment has no bearing on whether the defendant is guilty"; and, second, "exclusion is a prudential deterrent prescribed by the courts, not a personal right guaranteed by the Constitution[, so] [a]ny deterrence produced by an additional layer of habeas review is small, but the cost of undoing final convictions is great." *Good v. Berghuis*, 729 F.3d 636, 637 (6th Cir. 2013) (citing *Powell*, 428 U.S. at 490, 493).

An "opportunity for 'full and fair consideration'" under *Powell* "means an available avenue for the prisoner to present his claim to the state courts, not an inquiry into the adequacy of the procedure actually used to resolve that particular claim." *Id.* at 639. Thus, "[i]n the absence of a sham proceeding, there is no need to ask whether the state court conducted an evidentiary hearing or to inquire otherwise into the rigor of the state judiciary's procedures for resolving the claim." *Id.* Instead, federal habeas courts "must . . . presume that, once a federal claim comes before a state court, the state judge will use a fair procedure to achieve a just resolution of the claim". *Id. Powell* thus precluded federal habeas review of the petitioner's Fourth Amendment claim in *Good* because, even though he was not granted an evidentiary hearing on his motion to suppress, he was able to present his motion to the state trial and appellate courts, which considered and rejected it. *Id.* at 640.

In his Objections, Petitioner concedes Ohio's procedural mechanism for Fourth Amendment claims is adequate, but asserts appellate review was frustrated "because the

prosecution presented false evidence and the state appellate court relied on such". (Doc. 36, at 4). He points to the arguments made before the Ohio appellate courts. *Id.* at 4-5. As the R&R sets forth, however, Petitioner fully availed himself of Ohio's process for evaluating Fourth Amendment claims – through a motion to suppress, and an appeal to all levels of the Ohio courts.

As such, the Court overrules Petitioner's objection as to Ground One.

Ground Two

In Ground Two, Petitioner asserts a violation of his constitutional speedy trial rights. The R&R recommends this ground be dismissed on the merits, finding the state court's evaluation did not "result[] in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law". 28 U.S.C. § 2254(d)(1). Having reviewed *de novo* Petitioner's speedy trial claim, the Court agrees with the R&R's analysis and overrules Petitioner's objection.

Ground Four

In Ground Four, Petitioner raises a sufficiency of the evidence claim. The R&R recommends this ground be dismissed on the merits.

In reviewing the sufficiency of the evidence, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The reviewing court may not "reweigh the evidence, re-evaluate the credibility of witnesses, or substitute [its] judgment for that of the [fact-finder]." *Brown v. Konteh*, 567 F.3d 191, 205 (6th Cir. 2009). On habeas review this question involves "a double layer of deference": *Jackson* allows the state court to view the evidence in the light most favorable to the prosecution and to overturn only an unreasonable verdict, and AEDPA forbids the habeas court from overturning the conviction unless the state court's sufficiency determination itself was

unreasonable. *White v. Steele*, 602 F.3d 707, 710 (6th Cir. 2009). Given this "double deference," a habeas petitioner "who challenges the sufficiency of the evidence to sustain his conviction faces a nearly insurmountable hurdle." *Davis v. Lafler*, 658 F.3d 525, 534 (6th Cir. 2011) (quoting *United States v. Oros*, 578 F.3d 703, 710 (7th Cir. 2009)).

In his Objections, Petitioner contends the Magistrate Judge "misinterpret[ed] the conclusion advanced for this claim." (Doc. 36, at 6). He asserts:

> I stated that a reversal, or finding of insufficient evidence on kidnapping conviction necessitated the same for merged offenses because state law on O.R.C. § 2941.25 holds that the major crime consumes everything about the component offense(s). See, Gates Mills v. Yomtovian, 8th Dist. No. 88942, 2007-Ohio-6303, ¶ 23. In my mind, this rationale renders my attack on kidnapping an attack across the board. Consequently, I only have to prove that the prosecution failed to produce sufficient evidence for every element of kidnapping.

Id. at 6-7.

Petitioner points to contradictions within the evidence, specifically between the victim's testimony and other evidence of record, arguing there was insufficient evidence to support the kidnapping conviction. *See* Doc. 36, at 7 ("Relying on testimony, alone, reduces the burden of proof to beyond a reasonable doubt to that of the preponderance attached to credibility.").[1] But

1. Elsewhere in his Objections, Petitioner objects to the R&R's adoption of the facts as set forth by the Ohio appellate court. *See* Doc. 36, at 2 ("The facts outlined by the state appellate court cannot be presumed correct when the record contradicts the findings."). For purposes of habeas corpus review of state court decisions, findings of fact made by a state court are presumed correct and can only be contravened if the petitioner shows, by clear and convincing evidence, the state court's factual findings were erroneous. 28 U.S.C. § 2254(e)(1); *Moore v. Mitchell*, 708 F.3d 760, 775 (6th Cir. 2013). Petitioner's first objection to the facts simply points to inconsistencies in the victim's trial testimony and between her testimony and other documentation in the record. But this is not "clear and convincing" evidence that the state court's factual findings were erroneous; rather, it is simply a challenge to the factfinder's credibility determination.

Petitioner's second objection to the facts as found by state appellate court relates to the forensic biologist's testimony. The state appellate court said: "The forensic biologist explained she conducted testing that revealed the presence of amylase on both the front and back panels of K.B.'s underwear." *Martin*, 2018-Ohio1843, at ¶ 11. Petitioner contends that "in reality, she stated that

"the testimony of the victim alone is constitutionally sufficient to sustain a conviction." *Tucker v. Palmer*, 541 F.3d 652, 658 (6th Cir. 2008) (citing *United States v. Terry*, 362 F.2d 914, 916 (6th Cir. 1966) ("The testimony of the prosecuting witness, if believed by the jury, is sufficient to support a verdict of guilty.")). Thus, Petitioner's argument that there is no physical evidence to support the restraint element of kidnapping, or that there is no mention of restraint in the police report is unavailing. The state appellate court relied on the victim's testimony that Petitioner held her arms down during the attempted rape. *Martin*, 2018-Ohio-1843, at ¶ 59. Given the double deference applied, the Court finds no error with the R&R's conclusion that the state appellate court determination on the sufficiency issue was not contrary to, or an unreasonable application of *Jackson v. Virginia*.

Petitioner further argues, citing Ohio case law, that "the[] judge had no right to communicate with himself during deliberation, except publicly, and in the presence of the accused" and "[t]his illegal communication was the deciding force of [the] case." (Doc. 36, at 7). This argument was not presented to the Magistrate Judge in the first instance, and will thus not be considered. *Murr v. United States*, 200 F.3d 895, 902 n.1 (6th Cir. 2000) ("[W]hile the Magistrate Judge Act, 28 U.S.C. § 631 *et seq.*, permits *de novo* review by the district court if timely objections are filed, absent compelling reasons, it does not allow parties to raise at the district court stage new arguments or issues that were not presented to the magistrate.").

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samples (a cutting and a swab) were collected from area identified (back panel)" and the lab report shows amylase being found in only one area. (Doc. 36, at 3). However, even assuming Petitioner's interpretation were correct, he has not demonstrated it would change the sufficiency analysis. Indeed, the state appellate court, in finding there was sufficient evidence to support Petitioner's convictions, stated only: "K.B.'s testimony was corroborated by the testimony of other witnesses as well as DNA evidence indicating Martin's DNA was present in amylase swabbed from the rear panel of K.B.'s underwear." *Martin*, 2018-Ohio-1843, ¶ 59

Ground Five

In Ground Five, Petitioner raises a claim that his sentence was not authorized by Ohio law. The R&R recommends the Court find this ground non-cognizable and without merit. In his objections, Petitioner again presents an argument based on Ohio law.

As the R&R explained, the state appellate court found the sentence imposed comported with Ohio law. A federal habeas court is bound by a state court's interpretation of state law. *See Bradshaw v. Richey*, 546 U.S. 74, 76 (2005) ("We have repeatedly held that a state court's interpretation of state law, including one announced on direct appeal of the challenged conviction, binds a federal court sitting in habeas corpus."); *Estelle*, 502 U.S. at 67–68 ("it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions.").

Ground Six

Lastly, Petitioner objects to the R&R's recommendation that the Court dismiss Ground Six as non-cognizable because sex offender registration is a collateral consequence of conviction and does not satisfy the AEDPA's custody requirement. Petitioner contends the double jeopardy clause is implicated because the trial court sentenced him on the kidnapping charge, and also imposed a requirement that Petitioner register as a sex offender on the merged offenses of attempted rape and gross sexual imposition.

The Sixth Circuit – examining Ohio's sex offender registration laws – has explained that "personal registration requirements are not enough to render a sex offender 'in custody'." *Hautzenroeder v. DeWine*, 887 F.3d 737, 741 (6th Cir. 2018). And habeas relief is only available for "a person *in custody* pursuant to the judgment of a State court". 28 U.S.C. § 2254(a) (emphasis added). Thus, the challenge Petitioner brings to the validity of the registration requirement is not cognizable on habeas review.

Evidentiary Hearing

Petitioner also objects to the R&R's recommendation that his request for an evidentiary hearing be denied. (Doc. 36, at 3-4, 9). He specifically contends that an evidentiary hearing is required on Ground Six because "Respondent fail[ed] to submit a critical piece of the record supporting claim". (Doc. 36, at 9). But "where claims are non-cognizable and/or procedurally defaulted, such claims require no further factual development and thus an evidentiary hearing is not needed." *Minor v. Wainwright*, 2019 WL 653789, at *8 (N.D. Ohio), *report and recommendation adopted*, 2019 WL 652411; *see also Alt v. Eppinger*, 2015 WL 3489867, at *6 (N.D. Ohio) ("[I]f no cognizable or non-defaulted grounds are before federal court, no evidentiary hearing should be held since additional evidence cannot convert a non-cognizable claim into one upon which relief may be granted, nor, of itself, excuse a procedural default."). As such, the Court adopts the recommendation that Petitioner's request for an evidentiary hearing be denied.

CONCLUSION

For the foregoing reasons, good cause appearing, it is

ORDERED that Judge Baughman's R&R (Doc. 32) be, and the same hereby is, ADOPTED as the Order of this Court, and the Petition (Doc. 1) is DENIED and DISMISSED as set forth therein; and it is

FURTHER ORDERED that, because Petitioner has not made a substantial showing of a denial of a constitutional right directly related to his conviction or custody, no certificate of appealability shall issue. 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b); Rule 11 of Rules Governing § 2254 Cases. And the Court

FURTHER CERTIFIES, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this

decision could not be taken in good faith.

s/ James R. Knepp II
UNITED STATES DISTRICT JUDGE

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

TRAMAINE EDWARD MARTIN,

Petitioner,

v.

WARDEN JAY FORSHEY,

Respondent.

CASE NO. 1:18 CV 2381

JUDGE JAMES R. KNEPP II

JUDGMENT ENTRY

For the reasons stated in the related Memorandum Opinion and Order issued this same date, the Court ORDERS this case be DISMISSED.

IT IS SO ORDERED.

s/ James R. Knepp II
UNITED STATES DISTRICT JUDGE

June 24, 2022