

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ANTHONY CIOFFI,

Petitioner,

vs.

DAVID BOBBY, WARDEN,

Respondent.

CASE NO. 4:04-CV-1837

JUDGMENT

Pending before the Court are Petitioner Anthony Cioffi's Petition for a Writ of Habeas Corpus [Doc. 1], and Respondent David Bobby's Motion to Dismiss [Doc. 11]. Magistrate Judge George J. Limbert issued a Report and Recommendation recommending that this Court deny Petitioner Cioffi's Petition and grant Respondent Bobby's Motion to Dismiss [Doc. 12], to which the petitioner has objected [Docs. 13, 15]. For the reasons discussed in the accompanying Memorandum, the Court adopts the Magistrate Judge's Report and Recommendation. Petitioner Cioffi's Petition for a Writ of Habeas Corpus is DENIED and Respondent's Motion to Dismiss is GRANTED.

Further, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed. R. App. P. 22(b).

Accordingly, this action is terminated under Federal Rule of Civil Procedure 58.

IT IS SO ORDERED.

Dated: March 3, 2005

s/ James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

U.S. DISTRICT COURT

CASE NO. 05-10000-AMT

Texas

MEMORANDUM

DAVID HENRY, WASHINGTON

et al.

Plaintiff, et al. v. Defendant, et al. This Court has previously granted Plaintiff's Motion for Summary Judgment (Doc. 1) and Defendant's Motion to Dismiss (Doc. 11). Defendant Judge Charles L. Smith issued a Report and Recommendation recommending that this Court deny Plaintiff's Motion and grant Defendant's Motion to Dismiss (Doc. 12). To which the parties filed objections (Doc. 13, 14). Further review occurred in the accompanying Memorandum, the Court, upon the Magistrate Judge's Report and Recommendation, issued Plaintiff's Motion to Dismiss (Doc. 15) and Defendant's Motion to Dismiss (Doc. 16).

Further, this Court has previously (28 U.S.C. § 1717(a)(2)) and in regard to the jurisdiction of this Court to grant summary judgment, and that there is no basis upon which to issue a summary judgment. 28 U.S.C. § 1717(a)(2) (Mar. 11, 2005).