

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-01434-DME-BNB

OTTO F. RIVERA-BOTTZECK,

Petitioner,

v.

JOSEPH ORTIZ, Executive Director of DOC, COLORADO ATTORNEY  
GENERAL (Actually named as: The Attorney General of the State of Colorado),  
ALLAN STANLEY, Director, Colorado Parole Board,

Respondents.

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**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND  
RECOMMENDATION DATED MARCH 5, 2009**

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Petitioner Otto F. Rivera-Bottzeck filed a petition pursuant to 28 U.S.C. § 2254 seeking habeas relief from a Colorado state court judgment revoking a deferred judgment imposed after Rivera-Bottzeck pled guilty to one count of securities fraud. (Doc. 3 at 1-2.) After revoking the deferred judgment, the state court sentenced Rivera-Bottzeck to eight years in prison and five years of "mandatory parole." (Doc. 3 at 2.) In his federal habeas petition, Rivera-Bottzeck asserts two claims, alleging 1) there was insufficient evidence to support the state court's finding that he violated the terms of his deferred judgment; and 2) the state court deprived his of due process and equal protection of the law when the revocation hearing was conducted, not by the

trial judge who accepted Rivera-Bottzeck's guilty plea, but by another judge. (Doc. 3 at 5-6.)

In a report and recommendation dated March 5, 2009, the Magistrate Judge recommended denying Rivera-Bottzeck habeas relief, for both procedural and substantive reasons. (Doc. 39 at 1, 10-11.) Although the Magistrate Judge informed the parties that they had ten days after the date of service of the report and recommendation to file any objections they might have to that report and recommendation (doc. 39 at 12), neither party has filed any such objections.

This Court, then, "is accorded considerable discretion with respect to the treatment of unchallenged magistrate reports. In the absence of timely objection, the district court may review a magistrate's report under any standard it deems appropriate." Summers v. State of Utah, 927 F.2d 1165, 1167 (10th Cir. 1991); see also Thomas v. Arn, 474 U.S. 140, 149 (1985) (noting 28 U.S. C. § 636(b)(1)(C) "does not on its face require any review at all, by either the district court or the court of appeals, of any issue that is not the subject of an objection").

Although not required to do so, the Court has reviewed the Magistrate Judge's report and recommendation at issue here to insure that there is no "clear error on the face of the record." Strepka v. Sailors, 494 F. Supp.2d 1209, 1215 (D. Colo. 2007). Finding no such error, the Court AFFIRMS and ADOPTS in full the Magistrate Judge's report and recommendation dated March 5, 2009. Because that recommendation resolves all of Rivera-Bottzeck's pending habeas claims, the Court enters final judgment in favor of Respondents and terminates

this case.

Dated: April 21, 2009

BY THE COURT:

*s/ David M. Ebel*

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UNITED STATES CIRCUIT JUDGE