

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at LEXINGTON

CHRISTOPHER L. FLORENCE,)	
)	
Petitioner,)	Civil Action No. 07-cv-380-JMH
)	
v.)	MEMORANDUM OPINION
)	AND ORDER
JOSEPH P. MEKO, Warden,)	
)	
Respondent.)	
)	
)	

 ** ** ** ** **

 This matter is before the Court on the Report and Recommendation of Magistrate Judge James B. Todd. [Record No. 14.] Said action was referred to the magistrate for the purpose of reviewing the merit of Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and Respondent's motion for summary judgment. [Record Nos. 1, 6, 7.] Magistrate Judge Todd has recommended that Petitioner's petition for writ of habeas corpus be denied and that Respondents' motion for summary judgment be granted. Petitioner has filed objections to the report and recommendation [Record No. 16]. This matter is now ripe for review.

 Petitioner was found guilty of (1) possession of a forged Kentucky personal identification card (Count 1); (2) two counts of Theft by Deception over \$300 in relation to funds he withdrew from a bank checking account (Counts 2 and 3); and (3) with being a First-Degree Persistent Felony Offender (Count 4). Petitioner

received a total sentence of twenty (20) years on these charges.

Petitioner appealed his conviction to the Supreme Court of Kentucky. That court affirmed his conviction on all counts. *Florence v. Commonwealth*, 120 S.W.3d 699 (Ky. 2003). Petitioner filed a motion to vacate, set aside judgment and sentence in the trial court, pursuant to RCr 11.42. The trial court denied Petitioner's motion and he appealed that denial to the Kentucky Court of Appeals. The Kentucky Court of Appeals affirmed the trial court's denial. *Florence v. Commonwealth*, 2005-CA-001138-MR, slip op. (Ky. Ct. App. Jul. 14, 2006). The Supreme Court of Kentucky denied his petition for discretionary review of the decision of the Kentucky Court of Appeals. *Florence v. Commonwealth*, No. 2006-SC-0565-D, slip op. (Ky. May 16, 2007).

In his motion, Petitioner argues (1) that the trial court erred, in violation of his Fifth, Sixth, and Fourteenth Amendment rights, by denying him a *Daubert* hearing to challenge the handwriting analysis testimony; (2) that he received ineffective assistance of counsel, in violation of his Fifth, Sixth, and Fourteenth Amendment rights, when his counsel failed to object to testimony from the Commonwealth's handwriting expert; and (3) that the trial court erred, in violation of his Fifth, Sixth, and Fourteenth Amendment rights, by failing to render a directed verdict on both counts of Theft by Deception over \$300.

The Court has studied both the Magistrate Judge's Report and

Recommendation and Petitioner's objections. The Court concurs with Magistrate Judge Todd's finding that Petitioner is not entitled to federal habeas relief on any of his claims for the reasons stated in the Magistrate Judge's Report and Recommendation. The Court adopts the facts, procedural history, and analysis set forth by the Magistrate as the Court's own.

Accordingly, **IT IS ORDERED:**

(1) That the Report and Recommendation of the magistrate [Record No. 14] be, and the same hereby is, **ACCEPTED** and **ADOPTED**;

(2) That Respondents' motion for summary judgment [Record No. 7] be, and the same hereby is, **GRANTED**;

(3) That Petitioner's petition for a writ of habeas corpus [Record No. 1] be, and the same hereby is, **DENIED WITH PREJUDICE**;
and

(4) That this action be, and the same hereby is, **DISMISSED** and **STRICKEN** from the active docket.

This the 26th day of September, 2008.



Signed By:

Joseph M. Hood *JMH*

Senior U.S. District Judge