

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 08-cv-02655-CMA-KLM

MICHAEL GERARD KOPEC,

Plaintiff,

v.

RON LEYBA, Warden, and
JOHN SUTHERS, Attorney General of the State of Colorado,

Defendants.

**AMENDED ORDER ADOPTING AND AFFIRMING OCTOBER 30, 2009
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

This matter is before the Court on the October 30, 2009 Recommendation by the Magistrate Judge that Applicant's Second Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 be denied (Doc. # 30). The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B), Fed.R.Civ.P. 72(b).

The Recommendation advised the parties that specific written objections were due within ten (10) days after being served with a copy of the Recommendation. (Recommendation at 1.) Despite this advisement, no objections to the Magistrate Judge's Recommendation were filed by either party. "In the absence of timely objection, the district court may review a magistrate . . . [judge's] report under any standard it deems appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (citing *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that "[i]t does not appear

that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings”).

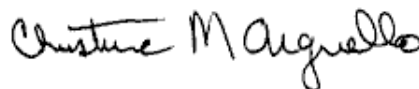
Applying this standard, the Court is satisfied that the Recommendation of the Magistrate Judge is sound and that there is no clear error on the face of the record. See Fed.R.Civ.P. 72(a). The Court agrees that this case should be dismissed. Accordingly, it is hereby

ORDERED that the Recommendation of the United States Magistrate Judge (Doc. # 30), filed October 30, 2009, is ACCEPTED, and, for the reasons cited therein, Applicant’s Second Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, filed January 9, 2009 (Doc. # 10), is DENIED and this civil action is hereby DISMISSED WITH PREJUDICE. It is

FURTHER ORDERED that a certificate of appealability should not issue because Applicant has not made a substantial showing of the denial of a constitutional right. “A certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c). Applicant is not entitled to a certificate of appealability.

DATED: December 10, 2009

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge