

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION

EUGENE BERNARD JACKSON,

Petitioner,

v.

CASE NO. 1:06-cv-00152-MP-AK

JAMES MCDONOUGH,  
JACK SAPP,

Respondents.

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**ORDER**

This matter is before the Court on Doc. 19, Report and Recommendation of the Magistrate Judge, recommending that this petition under 28 U.S.C. § 2254 be denied. The Petitioner filed objections, Doc. 22, which the Court has reviewed. The Court agrees with the Magistrate Judge that Petitioner's claims are without merit. First, he claims that his counsel was deficient for failing to ensure that the plea colloquy tested whether the plea was knowing and voluntary. The Magistrate Judge is correct that even though counsel did most of the questioning during the colloquy, the colloquy took place in open court with the judge frequently interjecting and obviously closely observing the proceeding. Second, the Court agrees with the Magistrate Judge that Petitioner has not presented "clear and convincing evidence" that the state court was wrong in finding that Petitioner's counsel correctly stated the law to petitioner regarding his likely sentence. Thus, that factual finding will not be overturned. Finally, Petitioner's third claim involves his answer of "I guess" when he was initially asked whether he wanted to plead guilty. He argues that his counsel failed to protect his rights after that response by looking further into whether the plea was truly voluntary. This claim is contradicted by the record of

the plea colloquy. Counsel and the court recognized the equivocation of Petitioner's answer, recognition which prompted (1) the court to suggest going on to trial instead and (2) counsel to propose altering the agreement to allow Petitioner to persist in his claims of innocence.

Petitioner could have stopped the plea at any time and insisted on going to trial, and he could have refused to initial the changes. Instead, he initialed the changes in the plea agreement and declined to go to trial. Accordingly, none of Petitioner's claims have merit, and it is hereby

**ORDERED AND ADJUDGED:**

1. The Report and Recommendation of the Magistrate Judge is adopted and incorporated herein.
2. The petition for writ of habeas corpus, Doc. 7, is denied, and this cause dismissed with prejudice.

**DONE AND ORDERED** this 17th day of December, 2008

*s/Maurice M. Paul*

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Maurice M. Paul, Senior District Judge