

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

DAVID A LOCK,

Petitioner,

v.

CASE NO. 1:07-cv-00144-MP-GRJ

ATTORNEY GENERAL CHARLES CRIST, JAMES R MCDONOUGH,

Respondents.

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**ORDER**

This matter is before the Court on Doc. 29, Report and Recommendation of the Magistrate Judge, recommending that the petition be dismissed. The time for filing objections has passed, and none have been filed. Upon consideration, the Court agrees that petitioner's claims are without merit. First, petitioner claims that counsel was ineffective for not objecting to the state's failure to prove identity. At trial, however, the victim testified unequivocally that he identified petitioner as the assailant. Second, counsel immediately objected to a police officer's testimony that the victim theorized that petitioner had broken his door earlier in the week. Thus, counsel was not ineffective for failing to object. Third, defense counsel did object to testimony that related to petitioner's refusal to allow consent to search his home, thus he cannot have been ineffective for failing to object. Finally, counsel did in fact move for a

judgment of acquittal at the close of the State's case-in-chief, and renewed his motion at the close of all of the evidence. Thus, petitioner cannot claim he was ineffective for failing to do so.

Accordingly it is hereby

**ORDERED AND ADJUDGED:**

1. The Report and Recommendation of the Magistrate Judge is accepted and incorporated herein.
2. The petition is denied and the Clerk is directed to close the file.
3. For the reasons stated above, the Court finds that Petitioner fails to make a substantial showing of the denial of a constitutional right and the issues are not adequate enough to deserve encouragement to proceed further. Accordingly, no certificate of appealability is appropriate in this case.

**DONE AND ORDERED** this 16th day of August, 2011

*s/Maurice M. Paul*

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Maurice M. Paul, Senior District Judge