

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

COURTNEY J. PRESTON,

Petitioner,

v.

Case No. 1:18-cv-68-AW-GRJ

**SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS,**

Respondent.

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ORDER DENYING § 2254 PETITION

Courtney Preston is serving life in prison for murder and home-invasion robbery. He has filed a § 2254 petition, raising three issues. ECF No. 7. The magistrate judge issued a report and recommendation, concluding that Preston is not entitled to relief. ECF No. 35. No objections have been filed. Having carefully considered the matter, I conclude the magistrate judge is correct.

In ground one, Preston contends that his trial counsel was ineffective for not moving for a judgment of acquittal on the robbery count. The gist of the claim is that there was no evidence of forced entry. As the magistrate judge explains, a conviction under the state law at issue does not require forced entry. At any rate, applying the “double deference due,” for this ineffective assistance claim, *Nance v. Warden, Ga. Diag. Prison*, 922 F.3d 1298, 1303 (11th Cir. 2019), I conclude Preston cannot prevail.

In grounds two and three, Preston challenges evidentiary decisions at his trial. He challenged those evidentiary decisions on direct appeal, relying on state law. As the magistrate judge concludes, these claims are unexhausted.

I now adopt the report and recommendation (ECF No. 35) and incorporate it into this order. The clerk will enter a judgment that says, “The § 2254 petition is denied.” Because I find no substantial showing of the denial of a constitutional right, a certificate of appealability is DENIED. The clerk will close the file.

SO ORDERED on September 9, 2021.

s/ Allen Winsor

United States District Judge