

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

ROSHUAN BALLARD,

Petitioner,

vs.

CASE NO. 4:08-cv-347-SPM/EMT

WALTER A. MCNEIL,

Respondent.

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ORDER ADOPTING REPORT AND RECOMMENDATION

THIS CAUSE comes before the Court for consideration of the Magistrate Judge's Report and Recommendation (doc. 39). Petitioner has been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). Petitioner filed objections (doc. 41). Pursuant to Title 28, United States Code, Section 636(b)(1), I have conducted a de novo review of the sections of the report to which objections have been made. I find that the Report and Recommendation is correct and should be adopted.

Petitioner brought this habeas corpus petition challenging his conviction of one count of aggravated child abuse related to the choking of his daughter. Several of the Petitioner's asserted grounds for habeas corpus relief were not properly raised before the state courts, and are therefore procedurally defaulted.

Moreover, as to those ineffective assistance of counsel claims remaining for consideration, Petitioner has not met the legal standard for constitutional ineffective assistance of counsel claims, as he cannot demonstrate a reasonable probability that but for his counsels' alleged errors the outcome of his underlying case would have been different. Lastly, Petitioner has not shown that he was denied the right to a fair trial.

Accordingly, it is hereby ORDERED AND ADJUDGED as follows:

1. The Magistrate Judge's Report and Recommendation (doc. 39) is ***adopted*** and incorporated by reference into this order.
2. The Second Amended Petition for Writ of Habeas Corpus (doc. 13) is ***denied***.
3. A certificate of appealability is ***denied***.

DONE AND ORDERED this twenty-fifth day of March, 2011.

s/ Stephan P. Mickle
Stephan P. Mickle
Chief United States District Judge