

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

ALLAN MICHAEL RUSH,

Petitioner,

v.

CASE NO. 4:09-cv-00470-MP-GRJ

WALTER A MCNEIL, KENNETH S TUCKER,

Respondents.

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**ORDER**

This matter is before the Court on Doc. 26, Report and Recommendation of the Magistrate Judge, recommending that the petition at Doc. 1 be denied in its entirety. In Doc. 27, petitioner objected only to claim number 3. The Court has made a de novo determination of those portions of the Report and Recommendation to which objection was made. 28 U.S.C. § 636(b)(1)(C). Upon consideration, the Court agrees with the Magistrate Judge that the state court was not unreasonable in finding that trial counsel's strategy of not subjecting petitioner to cross-examination but instead pointing to the lack of direct evidence of non-consent was reasonable under the circumstances. Thus, counsel was not ineffective in this or any other capacity. It is hereby

**ORDERED AND ADJUDGED:**

The Report and Recommendation of the Magistrate Judge, Doc. 24, is accepted and incorporated by reference. The the Petition for a Writ of Habeas Corpus, Doc. 1, is DENIED, and a certificate of appealability is DENIED.

**DONE AND ORDERED** this 27th day of March, 2013

*s/Maurice M. Paul*  
Maurice M. Paul, Senior District Judge