

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

GARY EARVEN,

Petitioner,

v.

4:18cv492–WS/EMT

MARK S. INCH,

Respondent.

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ORDER ADOPTING THE MAGISTRATE JUDGE’S  
REPORT AND RECOMMENDATION

Before the court is the magistrate judge's report and recommendation (ECF No. 16) docketed August 20, 2019. The magistrate judge recommends that Petitioner’s petition for writ of habeas corpus be denied on failure-to-exhaust grounds. Petitioner has filed objections (ECF No. 20) to the magistrate judge’s report and recommendation.

Having reviewed the record in light of Petitioner’s objections, the undersigned finds no meritorious basis for rejecting the magistrate judge’s report and recommendation. Like the magistrate judge, the undersigned finds that Petitioner failed to present to the state courts a federal constitutional claim based

on the sufficiency of the evidence—or lack thereof—to support his aggravated assault conviction. Because Petitioner thus failed to exhaust the federal due process claim that he raises here, it is ORDERED:

1. The magistrate judge's report and recommendation (ECF No. 16) is hereby ADOPTED and incorporated by reference into this order.
2. Petitioner's petition for writ of habeas corpus (ECF No. 1) is DENIED.
3. The clerk shall enter judgment stating: "Gary Earven's petition for writ of habeas corpus is DENIED."
4. A certificate of appealability is DENIED.
5. Leave to appeal in forma pauperis is DENIED.

DONE AND ORDERED this 11th day of October, 2019.

s/ William Stafford  
WILLIAM STAFFORD  
SENIOR UNITED STATES DISTRICT JUDGE