

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

CHRISTOPHER BRIAN MORRISON,

Petitioner,

vs.

CASE NO. 5:08-cv-253-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. 41). Petitioner has been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). Petitioner filed an objection (doc. 43). 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 felony murder for the death of his girlfriend's three-year-old son. Petitioner objects to the Magistrate Judge's recommendation to deny the Petitioner's first and third grounds for habeas relief, including a new ineffective

assistance of counsel claim which charges the Petitioner's trial counsel with failing to adequately investigate the evidence, based on the Petitioner's failure to properly exhaust the claims. Petitioner fully acknowledges that he did not exhaust these claims in state court, but asserts that he should be allowed to raise them in a habeas proceeding pursuant to the "actual innocence" doctrine. However, the new evidence produced by the Petitioner, consisting of reports from the Florida Protective Services System and the victim's mother's mental health records, does not support the Petitioner's claim of actual innocence. Petitioner has failed to show that it is more likely than not that no reasonable juror would have convicted him had this new evidence been produced at trial, and is therefore not entitled to federal review of his procedurally barred ineffective assistance of counsel claims.

Accordingly, it is hereby ORDERED AND ADJUDGED as follows:

1. The Magistrate Judge's Report and Recommendation (doc. 41) is **adopted** and incorporated by reference into this order.
2. The Petitioner's Motion to Amend the Petition for Writ of Habeas Corpus (doc. 26) is **denied**.
3. The Petition for Writ of Habeas Corpus (doc. 1) is **denied**.

DONE AND ORDERED this nineteenth day of March, 2010.

s/ Stephan P. Mickle

Stephan P. Mickle
Chief United States District Judge