

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 08-CIV-22994-GOLD/WHITE

RICKY KEMP,

Petitioner,

v.

WALTER McNEIL,

Respondent.

/

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS
AS TO HABEAS PETITION [DE 19]; DENYING PETITION [DE 1]; CLOSING CASE

THIS CAUSE came before the Court upon Magistrate Judge Patrick A. White's September 14, 2009 Report and Recommendations [DE 19] ("Report") on Ricky Kemp's ("Kemp's") *pro se* Petition for Writ of Habeas Corpus attacking his conviction and sentence in case number 04-11860, entered in the Eleventh Judicial Circuit Court for Miami-Dade County pursuant to 28 U.S.C. § 2254 on the grounds that he received ineffective assistance of Counsel ("the Petition") [DE 1].

Magistrate Judge White recommends that Petitioner's petition challenging the constitutionality of his conviction and sentence be denied on the grounds that the state court denials of Petitioner's ineffective assistance of counsel claims were not "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1); *Fugate v. Head*, 261 F.3d 1206, 1215-16 (11th Cir. 2001). No objections were timely filed.

Having reviewed the Report and Recommendations, the record, the applicable law, and being otherwise duly advised in the Premises, I affirm and adopt Magistrate Judge

White's Report [DE 19] and deny the Petition for Writ of Habeas Corpus on the grounds that Kemp has not adequately demonstrated that the state court denials of his ineffective assistance of counsel claims were contrary to, or an unreasonable application of, the U.S. Supreme Court's decision in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984), which requires a criminal defendant to show that: (1) counsel's performance was deficient and (2) the deficiency prejudiced him. *Id.* at 690; [DE 19, pp. 9-13].

Accordingly, it is hereby:

ORDERED AND ADJUDGED that:

1. The Report [DE 19] is AFFIRMED AND ADOPTED.
2. For the reasons discussed in the Report, the Petition [DE 1] is DENIED.
3. All other pending motions are DENIED AS MOOT and all hearings are CANCELLED.
4. This case is CLOSED.

DONE AND ORDERED in Chambers at Miami, Florida, this 16 day of October, 2009.



THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT COURT JUDGE

cc:

Magistrate Judge Patrick A. White
All Counsel of Record

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