

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-22687-CIV-UNGARO

DAGOBERTO MARTINEZ

Petitioner,

v.

WALTER A. McNEIL,

Respondent.

ORDER AFFIRMING MAGISTRATE JUDGE'S REPORT

THIS CAUSE is before the Court upon Petitioner's *pro se* Petition for Habeas Corpus ("Petition") pursuant to 28 U.S.C. § 2254, filed September 10, 2009. (D.E. 1.)

THE COURT has reviewed the record as a whole and is otherwise fully advised in the premises.

This matter was referred to Magistrate Judge Patrick A. White, who, on July 14, 2010, issued a Report recommending that the Petition be denied due to Petitioner's failure to exhaust state remedies, and, alternatively be denied on the merits. (D.E. 20.) The parties were afforded the opportunity to file objections to the Magistrate Judge's Report, and on August 1, 2010 Petitioner filed objections to the Report. (D.E. 21.) The matter is now ripe for review.

The Magistrate Judge recommends that the Petition be denied for procedural default because Petition failed to exhaust his state remedies; further, the Report concludes that dismissal of the Petition is unwarranted because further efforts to pursue his claims in state court would be futile. Alternatively, the Magistrate Judge recommends that the Petition be denied on the merits. Finally, the Magistrate Judge also concluded that no evidentiary hearing was required on

Petitioner's claim.

In his objections to the Magistrate Judge's Report, the Petitioner contends that the issues presented in his Petition were argued in the state court. He does not, however, present any argument to rebut the Magistrate Judge's conclusion that he did not indicate in his state court proceedings that he wished to raise federal claims. And with respect to Petitioner's objections to the Magistrate Judge's conclusions on the merits of his Petition, Petitioner articulately restates the arguments raised in his Petition but goes no further. He raises no factual or legal arguments that were not already considered both by the Magistrate Judge and by the undersigned on a *de novo* review of the record.

After careful consideration of the Petitioner's arguments, the Court ultimately concurs with the conclusions reached in the Magistrate Judge's Report. Accordingly, having conducted a *de novo* review of the record, it is hereby

ORDERED AND ADJUDGED that the Magistrate Judge's Report (D.E. 20) is RATIFIED, ADOPTED and AFFIRMED. Petitioner's *pro se* Petition for Writ of Habeas Corpus (D.E. 1) is DENIED; no evidentiary hearing is required as to this matter.

DONE and ORDERED in Chambers, at Miami, Florida this 16th day of August, 2010.



URSULA UNGARO
UNITED STATES DISTRICT JUDGE

copies provided:
Dagoberto Martinez, *pro se*
Counsel of record