

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

WENDELL HARPER SMITH,	:	
	:	
Petitioner,	:	
	:	
v.	:	CASE NO.: 1:07-CV-10 (WLS)
	:	
DON JARRIEL, Warden,	:	
	:	
Respondent.	:	
	:	

ORDER

Before the Court is a Report and Recommendation from United States Magistrate Judge Claude W. Hicks, Jr., filed April 12, 2010. (Doc. 33). It is recommended that Petitioner's petition for writ of *habeas corpus* be denied. (*Id.* at 10). Petitioner filed a timely Objection to the Recommendation. (Doc. 34).

For the following reasons, the objections set forth in Petitioner's Objection (Doc. 34) are **OVERRULED** and United States Magistrate Judge Hicks's April 12, 2010 Report and Recommendation (Doc. 33) is **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein together with the reasons stated and conclusions reached herein. Accordingly, Petitioner's petition for writ of *habeas corpus* (Doc. 2) is **DENIED**.

Regarding Petitioner's multiple grounds asserting ineffective assistance of counsel in his state court trial, Judge Hicks found that the state *habeas corpus* court properly relied upon and applied the principles governing ineffectiveness set forth in Strickland v. Washington, 466 U.S. 668 (1984), to the facts of Petitioner's case. (Doc. 33 at 8). Judge Hicks thus found no grounds for federal *habeas* relief as to Petitioner's claims of ineffective assistance of counsel. (*Id.*).

While Petitioner's Objection offers much criticism about trial counsel's tactical and strategic trial decisions, it fails to show that the state *habeas corpus* court misapplied Strickland, and thus that Judge Hicks's finding was erroneous. The Court therefore finds that Petitioner's Objection (Doc. 34) fails to rebut the legally sound recommendation of Judge Hicks regarding Petitioner's grounds asserting ineffective assistance of counsel.

Regarding Petitioner's two grounds asserting insufficiency of evidence to support a conviction – Grounds Six and Eight – Judge Hicks found that the Georgia Supreme Court's conclusions did not run afoul of clearly established federal law, and thus that federal *habeas* relief is unavailable. (Doc. 33 at 9). Petitioner's Objection does not address Ground Eight (*see generally* Doc. 34), thus waiving any objection thereto. Petitioner's Objection regarding Ground Six merely argues about the trial evidence, but fails to establish that the Georgia Supreme Court's conclusions were contrary to clearly established federal law. (*Id.* at 12-13). The Court therefore finds that Petitioner's Objection (Doc. 34) fails to rebut the legally sound recommendation of Judge Hicks regarding Petitioner's two grounds asserting insufficiency of evidence.

Regarding Petitioner's two remaining grounds – Grounds Seven and Nine – Judge Hicks found both to be inapplicable grounds for federal *habeas* relief. (Doc. 33 at 9). Petitioner's Objection does not address Ground Nine (*see generally* Doc. 34), thus waiving any objection thereto, and Petitioner's argument regarding Ground Seven makes no showing that the introduction of photographic evidence at trial is anything other than a state-law question. (*See* Doc. 34 at 13-14). The Court therefore finds that Petitioner's Objection (Doc. 34) fails to rebut the legally sound recommendation of Judge Hicks regarding Petitioner's remaining two grounds.

For the foregoing reasons, the objections set forth in Petitioner's Objection (Doc. 34) are **OVERRULED** and United States Magistrate Judge Hicks's April 12, 2010 Report and Recommendation (Doc. 33) is **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein together with the reasons stated and conclusions reached herein. Accordingly, Petitioner's petition for writ of *habeas corpus* (Doc. 2) is **DENIED**.

Additionally, for clarification of the record, the Court acknowledges that Petitioner, by notice filed on July 3, 2007 (Doc. 21), voluntarily withdrew his June 20, 2007 appeal to this Court (Docs. 16, 19) of United States Magistrate Judge Richard L. Hodge's Order (Doc. 15).

SO ORDERED, this 2nd day of June, 2010.

/s/ W. Louis Sands
THE HONORABLE W. LOUIS SANDS,
UNITED STATES DISTRICT COURT