

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION  
LEXINGTON

CIVIL ACTION NO. 09-377-JBC-CJS

ALFRED BATES,

PETITIONER,

V.

MEMORANDUM OPINION AND ORDER

DON BOTTOM, WARDEN,

RESPONDENT.

\* \* \* \* \*

This matter is before the court on Magistrate Judge Candace J. Smith's amended report and recommendation for disposition of Alfred Bates's petition for a writ of habeas corpus (R. 26) and Bates's objection (R. 29). Having reviewed these documents and the record, the court will adopt the amended report and recommendation.

Bates's objections are overruled because they merely repeat arguments already considered by Judge Smith. Judge Smith properly found that Bates's claim of ineffective assistance of appellate counsel does not affect the disposition of his habeas corpus petition because Bates does not present an actionable federal constitutional claim.

In his objection, Bates also requests the court to appoint counsel, presumably to assist in this habeas proceeding, as he has been transferred to a facility without a law library or inmate legal aid. The court construes this as a motion which it will deny.

Accordingly, the court **ORDERS** as follows:

(1) Judge Smith's amended report and recommendation (R. 26) is **ADOPTED** as the opinion of the court.

(2) Bates's petition for a writ of habeas corpus (R. 1) is **DENIED**.

(3) A certificate of appealability is **DENIED** for the reasons stated in Section III of Judge Smith's recommendation.

(4) Bates's construed motion to appoint counsel is **DENIED**.

(5) This matter shall be **CLOSED** and **STRICKEN** from the active docket.

A separate judgment will issue.

Signed on January 24, 2012



*Jennifer B. Coffman*

JENNIFER B. COFFMAN, JUDGE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY