

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 07-10182-RWZ

LEONARD JACKSON

v.

LOIS A. RUSSO

CERTIFICATE OF APPEALABILITY

January 9, 2009

ZOBEL, D.J.

Petitioner was convicted of first-degree murder and unlawful possession of a firearm in the Massachusetts state court. After he exhausted all of his state court remedies, he came to this court seeking a writ of habeas corpus. He asserts violations of his Fourth Amendment rights because he was allegedly taken to the police station involuntarily and arrested without a warrant and because there was no judicial determination of probable cause. He claims violations of his Fifth Amendment privilege against self-incrimination and his right to counsel, and that the ineffective assistance of his counsel amounted to a violation of the Sixth Amendment. All of his claims were subjected to extensive post-trial hearings by the state court either on motion to that court or on remand from the Supreme Judicial Court. All were ultimately rejected because not supported by the facts. Nonetheless, petitioner's first three claims, those asserted under the Fourth and Fifth Amendments, raise questions that may be subject to varying answers and as to them the certificate of appealability is granted. No such

difference of view exists as to the ineffective assistance of counsel claim as petitioner has not and cannot show prejudice. The request for a certificate is denied as to that claim.

January 9, 2009

DATE

/s/Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE