

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 12-12023-RGS

FAUSTO SOTO,  
Petitioner

v.

KELLY RYAN,  
Respondent

ORDER ON REPORT AND RECOMMENDATION  
OF THE MAGISTRATE JUDGE

March 14, 2014

STEARNS, D.J.

I agree with Magistrate Judge Bowler's thorough and comprehensive Report, specifically: (1) that Grounds one and two of the petition raise alleged errors of state law that this court has no jurisdiction to correct;<sup>1</sup> and (2) that Grounds three and four of the petition, which raise Confrontation Clause

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<sup>1</sup> The first is a disagreement with the Massachusetts state court over the proper interpretation of the home invasion statute under which petitioner was convicted, while the second (that the trial judge improperly instructed the jury on the elements of home invasion) is simply a variant of the first. In deference to the petitioner's pro se status, the Magistrate Judge gave the petition the most liberal construction possible in her attempt to ferret out a conceivable federal claim lurking in the recesses of Grounds one and two. The exercise while commendable, was not one incumbent upon her to undertake. Nonetheless, to the extent that she was able to posit possible due process claims, I agree with her conclusion that they are of no avail to petitioner.

claims involving limits placed by the trial judge on the scope of the cross-examination permitted of the victim of the home invasion (restricting inquiry into pending drug charges at the time of trial and refusing to admit the victim's arrest record as impeachment), do not identify any state court determination that was contrary to or an unreasonable application of federal law clearly established by the United States Supreme Court.<sup>2</sup> Consequently, the Recommendation is ADOPTED and the petition is DISMISSED with prejudice.<sup>3</sup> Any request for the issuance of a Certificate of Appealability pursuant to 28 U.S.C. § 2253 is DENIED, the court seeing no meritorious or substantial basis supporting an appeal. The Clerk is instructed to close the case.

SO ORDERED.

/s/ Richard G. Stearns

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UNITED STATES DISTRICT JUDGE

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<sup>2</sup> The Magistrate Judge correctly identified *Delaware v. Van Arsdall*, 475 U.S. 673 (1986), *Davis v. Alaska*, 415 U.S. 308 (1974), and *Chambers v. Mississippi*, 410 U.S. 284 (1973), as the relevant and controlling precedents.

<sup>3</sup> Petitioner has filed an Objection that simply repeats the substance of the arguments made in his Petition without identifying any flaws in the reasoning of the Magistrate Judge's Report or in her conclusions.