

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 15-13767-RGS

PHILLIP POPE EVANS

v.

KELLY RYAN

ORDER ADOPTING
REPORT AND RECOMMENDATION ON
PETITION FOR WRIT OF HABEAS CORPUS

December 1, 2017

STEARNS, D.J.

On June 12, 2011, Petitioner Phillip Pope Evans was convicted in the Superior Court of manslaughter, armed assault with intent to kill, and carrying a firearm without a license. He is currently serving a fifteen-to-twenty-year sentence. On October, 26, 2015, Evans petitioned this court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, as amended by the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), alleging that his trial counsel did not provide constitutionally required effective assistance of counsel for having failed to consult and retain an expert in adolescent brain development. Evans argues that such an expert would have testified that given his age and intellectual development at the time of the

homicide his use of force in self-defense was reasonable. *See* Dkt #1 at 5; Dkt #2 at 23.¹

I agree with Magistrate Judge Boal's thorough Report and her determination that Evans has failed to show that the Massachusetts Appeals Court misapplied established Supreme Court precedent in concluding that the assistance provided by Evans' counsel was well within "the prevailing professional norms." *Pina v. Maloney*, 565 F.3d 48, 56 (1st Cir. 2009). Consequently, her recommendation is ADOPTED and the petition is DISMISSED with prejudice.

Petitioner is advised that any request for the issuance of a Certificate of Appealability pursuant to 28 U.S.C. § 2253 of the court's Order denying his Petition for Writ of Habeas Corpus is also DENIED, the court seeing no meritorious or substantial basis supporting an appeal.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

¹ Evans has not filed an Objection to the Report and Recommendation.