

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EARNELL HAILES,

Petitioner,

Case No. 03-74144

v.

Judge Denise Page Hood

FABIAN LAVIGNE,

Respondent.

ORDER ACCEPTING REPORT AND RECOMMENDATION

This matter is before the Court on Magistrate Donald A. Scheer's Report and Recommendation [**Docket No. 45, filed March 24, 2009**]. Neither party has filed an objection and the time to do so has expired. For the reasons set forth below, the Court ACCEPTS and ADOPTS Magistrate Judge Scheer's Report and Recommendation.

Magistrate Judge Sheer concluded that the Petition for Writ of Habeas Corpus should be dismissed because the Petitioner procedurally defaulted his claims before the state court, and was unable to demonstrate cause for the default. The Court has had an opportunity to review this matter and finds the Magistrate Judge reached the correct conclusion for the proper reasons.

Accordingly,

IT IS ORDERED that the Report and Recommendation of Magistrate Judge Donald A. Scheer [**Docket No. 45, filed March 24, 2009**] is **ACCEPTED** and **ADOPTED** as this Court's findings and conclusions of law.

IT IS FURTHER ORDERED that Petitioner Motion for Enlargement Upon Bail Pending Resolution of Habeas Corpus Petition [**Docket No. 43, filed Jan. 29, 2009**] is

DENIED.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: May 28, 2009

I hereby certify that a copy of the foregoing document was served upon Earnell Hailes, Reg. No. 324652, Bellamy Creek Correctional Facility, (IBC), 1727 W. Bluewater Hwy., Ionia, MI 48846 and counsel of record on May 28, 2009, by electronic and/or ordinary mail.

S/William F. Lewis
Case Manager