

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANIEL LEE MAXSON, II,

Petitioner,

Civil Action No.
06-CV-15191

vs.

GERALD HOFBAUER,

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Respondent.

**ORDER ACCEPTING AND ADOPTING THE MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION, OVERRULING PETITIONER'S OBJECTIONS,
AND DENYING PETITIONER'S APPLICATION FOR A CERTIFICATE OF
APPEALABILITY**

This is a habeas corpus case. On July 31, 2009, the Court issued an order denying Petitioner's Petition for Writ of Habeas Corpus. *See* docket entry 32. On December 31, 2009, Magistrate Judge Donald A. Scheer issued a Report and Recommendation ("R&R") in which he recommends that Petitioner's Application for a Certificate of Appealability be denied.

On January 15, 2010, Petitioner filed objections to the R&R. The Court reviews *de novo* those portions of the R&R to which a specific objection has been made. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Having done so, the Court finds, over Petitioner's objections, that Magistrate Judge Scheer has reached the proper conclusions for the proper reasons.¹ Accordingly,

¹ In addition to the reasons given by Magistrate Judge Scheer in his R&R, the Court notes that Petitioner wishes to appeal an issue that has recently been decided by the Sixth Circuit in Respondent's favor. *See Chontos v. Berghuis*, 585 F.3d 1000 (6th Cir. 2009) (clarifying that there can be no Sixth Amendment violation under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and its progeny, when a trial judge finds facts that increase a minimum sentence so long as the

IT IS ORDERED that Magistrate Judge Scheer's R&R dated December 31, 2009, is accepted and adopted as the findings and conclusions of the Court.

IT IS FURTHER ORDERED that Petitioner's objections to the R&R are overruled.

IT IS FURTHER ORDERED that Petitioner's Application for a Certificate of Appealability is denied.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: February 11, 2010

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on February 11, 2010.

s/Denise Goodine
Case Manager

sentence does not exceed the applicable statutory maximum).