

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFREY ALLEN NYE,

Petitioner,

vs.

CASE NO. 06-15425
HON. LAWRENCE P. ZATKOFF

RAYMOND BOOKER,

Respondent.

**OPINION AND ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Petitioner, proceeding *pro se*, filed an application for a writ of habeas corpus (Docket #1). This matter is currently before the Court on Magistrate Judge Komives' Report and Recommendation regarding the application for writ of habeas corpus (Docket #26). The Magistrate Judge recommends that Petitioner's application for the writ of habeas corpus be denied. Petitioner filed Objections to the Report and Recommendation after the deadline; however, as Petitioner has demonstrated that he did not receive the Report and Recommendation in a timely manner, the Court has reviewed and considered Petitioner's Objections.

After a thorough review and consideration of the court file, the Report and Recommendation and Petitioner's Objections, this Court will adopt the Report and Recommendation and enter it as the findings and conclusions of this Court. In addition, the Court briefly addresses Petitioner's Objections, as follows. In essence, Petitioner contends that there was a clear violation of his "double jeopardy Equal Protection" rights because his appellate counsel did not raise the issue before the Michigan Court of Appeals. In reviewing the record, including the Michigan Court of Appeals ruling regarding Petitioner's case, the Court notes that the Michigan Court of Appeals vacated Petitioner's second degree murder conviction on double jeopardy grounds. *People v. Nye*, No. 252557, 2005 WL 82042 (Mich. Ct. App. Apr. 14, 2005)(per curiam). Although the Michigan Court

of Appeals acted *sua sponte* (as the issue apparently was not raised by Petitioner's appellate counsel), the Court of Appeals decision was the correct legal ruling and ensured Petitioner's double jeopardy rights. *See Jones v. Thomas*, 491 U.S. 376, 381-82 (1989); *People v. Herron*, 464 Mich. 593, 609 (2001). Thus, any constitutional injury to which Petitioner may have been subject was remedied by the Michigan Court of Appeals decision. Accordingly, the Court finds that Petitioner's objection is without merit.

Accordingly, and for the reasons set forth above and in the Report and Recommendation, the Court hereby DENIES Petitioner's application for a writ of habeas corpus. Judgment shall be entered accordingly.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: July 10, 2009

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on July 10, 2009.

s/Marie E. Verlinde
Case Manager
(810) 984-3290