

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

JOSEPH PEACOCK,

Petitioner,

Case No. 07-12215

Hon. Lawrence P. Zatkoff

v.

JERI ANN SHERRY,

Respondent.

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

This matter comes before the Court on Magistrate Judge Morgan's Report and Recommendation [dkt 11], in which the Magistrate Judge recommends denying Petitioner's petition for writ of habeas corpus [dkt 1]. Petitioner did not file an objection to the Report and Recommendation and the allotted time period to do so has elapsed. The Court has thoroughly reviewed the court file and the Report and Recommendation. As a result of that review, the Court ADOPTS the Report and Recommendation and enters it as the findings and conclusions of this Court.

In addition, Petitioner requested an evidentiary hearing on his petition [dkt 10]. Title 28 U.S.C. § 2254(e)(2) limits the circumstances under which a habeas petitioner may seek an evidentiary hearing. Even if an evidentiary hearing is permitted under that section, Rule 8 of the Rules Governing § 2254 Cases in the United States District Courts allows the district judge to determine, in light of the record, whether an evidentiary hearing is warranted. *See* 28 U.S.C. foll. § 2254. After a careful review of the record, the Court finds that an evidentiary hearing is unnecessary in this case as Petitioner does not show that "a new evidentiary hearing would be

meaningful, in that a new hearing would have the potential to advance the petitioner's claim." *Campbell v. Vaughn*, 209 F.3d 280, 287 (3d Cir. 2000); *see also McAdoo v. Elo*, 365 F.3d 487, 500 (6th Cir. 2004). Therefore, Petitioner's motion for an evidentiary hearing [dkt 10] is DENIED.

Accordingly, IT IS HEREBY ORDERED that Petitioner's request for an evidentiary hearing [dkt 10] is DENIED and Petitioner's petition for writ of habeas corpus [dkt 11] is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

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

Dated: February 17, 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 February 17, 2009.

S/Marie E. Verlinde
Case Manager
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