

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RANDY MARLAN HAYNES,

Petitioner,

v.

CASE NO. 07-CV-14522

HON. GEORGE CARAM STEEH

GERALD HOFBAUER,

Respondent.

_____ /

ORDER ACCEPTING MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION, (#12) AND DENYING CERTIFICATE OF APPEALABILITY

Petitioner Randy Marlan Haynes, a state prisoner currently incarcerated at the Marquette Branch Prison in Marquette, Michigan, was convicted of armed robbery and fourth habitual offender following a plea hearing in the Kent Circuit Court. On March 30, 2005, petitioner was sentenced to a term of 18-40 years' imprisonment.

Petitioner appealed as of right to the Michigan Court of Appeals, which affirmed his conviction and sentence. Petitioner also filed a motion to withdraw his plea, which was denied by the trial court. Petitioner filed a motion for reconsideration with the Michigan Court of Appeals, presenting the following two issues, which were previously raised in the motion to withdraw the plea:

1. Appellant was denied his state and federal constitutional rights to due process and trial by jury when the trial court denied appellant's motion to withdraw his plea after the prosecution breached a plea agreement.
2. Trial counsel provided ineffective assistance where he induced and allowed

appellant to plead to a charge that was not a part of the plea agreement, thereby denying appellant his state and federal constitutional rights to effective assistance of counsel and due process of law.

The court of appeals denied the motion for reconsideration. Petitioner applied for leave to appeal in the Michigan Supreme Court, which application was denied.

On October 23, 2007, petitioner, proceeding *pro se*, filed the instant application for a writ of habeas corpus. Petitioner raises the two issues that were raised in the motion to withdraw the plea, motion for reconsideration in the court of appeals, and application for leave to appeal to the Michigan Supreme Court. Respondent filed an answer on April 24, 2008, contending that petitioner's claims are unexhausted, and that at the time the plea was entered, petitioner was fully aware of the current plea agreement and chose to plead no contest to the counts of armed robbery and fourth habitual offender. Petitioner filed a reply on May 19, 2008.

On November 3, 2009, the Magistrate Judge filed a report and recommendation thoroughly analyzing the law and arguments, and recommending that petitioner's application for the writ of habeas corpus should be denied. Objections to that report have not been filed by petitioner within the established time period. The court has reviewed the file, record, and magistrate judge's report and recommendation and accepts the magistrate judge's well-reasoned recommendation. Accordingly,

IT IS HEREBY ORDERED that the court ACCEPTS and ADOPTS the Magistrate's report and recommendation as its findings and conclusions in this matter. Petitioner's application for writ of habeas corpus is DENIED.

In the event that petitioner appeals this order, he must obtain a certificate of

appealability. The Court may issue a certificate of appealability if the petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). This Court finds that petitioner has not made a substantial showing of the denial of a federal right. Therefore, the Court hereby finds that a certificate of appealability is not warranted.

SO ORDERED.

Dated: November 30, 2009

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on November 30, 2009, by electronic and/or ordinary mail.

S/Josephine Chaffee
Deputy Clerk