

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREGORY CARTER,

Petitioner,

CASE NO. 1:09-CV-215

v.

HON. ROBERT J. JONKER

BLAINE LAFLER,

Respondent.

/

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Kent's Report and Recommendation in this matter (ECF No. 88) and Petitioner Carter's Objection to it (ECF No. 91). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Petitioner's Objection to it. After its review, the Court

finds that Magistrate Judge Kent's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends denying the habeas petition on the basis that Petitioner has failed to establish the actual prejudice necessary to overcome his procedural default. In his Objection, Petitioner fails to address the compelling evidence of Petitioner's guilt presented at trial. The Report and Recommendation carefully, thoroughly, and accurately discusses this evidence. For example, Petitioner Carter's sentencing judge found that "Mr. Carter was convicted by . . . overwhelming evidence," including "a videotape of the robbery" that was of "excellent" quality and "showed very clearly Mr. Carter robbing this particular convenience store." (ECF No. 11, Sent. Trans. at 4). Additionally, the Magistrate Judge describes the victim's unwavering description and identification of Petitioner as the robber, the details of which were corroborated by the black fleece jacket, hoop earrings, and pack of Kool cigarettes in the robber's possession at the time of his arrest. The Court agrees with the Magistrate Judge's conclusion that Petitioner's habeas petition should be dismissed, for the very reasons the Report and Recommendation delineates.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 88) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that the habeas petition (ECF No. 1) is **DENIED** and this case is **DISMISSED**.

Dated: January 19, 2017

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE