

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ISSAC DECRAIS HARRIS,

Petitioner,

v.

Case No. 2:08-cv-198
HON. R. ALLAN EDGAR

GREG MCQUIGGIN,

Respondent.

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OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S

REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on November 2, 2010. The Report and Recommendation was duly served on the parties. Petitioner has filed a motion for reconsideration, which the Court will consider as objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Petitioner has stated that he would like to stay the proceedings to exhaust in the state courts an ineffective assistance of counsel claim for failing to call at trial petitioner's alibi witness, Mellisa Moore. Petitioner states that he only recently discovered that Mellisa Moore was not aware of the trial date. However, it appears that petitioner's counsel was aware of Mellisa Moore because petitioner presented this Court with the "wrong" subpoena that was served on Mellisa Moore for the original trial date. It is not clear why Mellisa Moore was not called to testify at petitioner's trial. However, it is not fair for petitioner to assert that he learned of newly discovered evidence regarding

Mellisa Moore. According to petitioner, he was with Mellisa Moore at the time the crime was committed. Petitioner knew that Mellisa Moore was not called as a witness to testify on his behalf. Petitioner has failed to explain why this issue was not pursued immediately. Moreover, petitioner has not shown that he has a pending motion for relief for judgment in the state courts on this issue.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (Docket #34) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that petitioner's motion to hold petition in abeyance (Docket #29) is DENIED.

Dated: 3/8/2011

/s/ R. Allan Edgar
R. Allan Edgar
United States District Judge