

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Charles Ray Barnes,

Civil No. 09-3116 (DWF/JSM)

Petitioner,

**ORDER ADOPTING REPORT
AND RECOMMENDATION
AND MEMORANDUM**

v.

John King, Warden, MCF-Stillwater,

Respondent.

Michael C. Davis, Esq., Davis Law Office, counsel for Petitioner.

Debra E. Schmidt, Assistant County Attorney, Dakota County Attorney's Office; and Matthew Frank, Assistant Attorney General, Minnesota Attorney General's Office, counsel for Respondent.

This matter is before the Court upon Petitioner Charles Ray Barnes's ("Petitioner's") objections to Magistrate Judge Janie S. Mayeron's Report and Recommendation dated November 17, 2010, insofar as it recommends that Petitioner Charles Ray Barnes's Petition for Habeas Corpus by a Person in State Custody be dismissed with prejudice.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Charles Ray Barnes's objections (Doc. No. [9]) to Magistrate Judge Jayne S. Mayeron's Report and Recommendation dated November 17, 2010, are **DENIED**.

2. Magistrate Judge Jayne S. Mayeron's Report and Recommendation dated November 17, 2010 (Doc. No. [6]), is **ADOPTED**.

3. Ray Barnes's Petition for Habeas Corpus by a Person in State Custody (Doc. No. [1]) is **DISMISSED WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 1, 2011

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge

MEMORANDUM

As the Court noted above, it has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b).

The record in this case establishes that the Defendant's trial counsel's representation did not fall below the objective standard of reasonableness as contemplated

and established by *Strickland v. Washington*, 466 U.S. 668, 686 (1984). The record fails to establish that Defendant's trial counsel was deficient and that any deficient performance prejudiced the defense. Close scrutiny of the record before the Court establishes that there is no reasonable probability, but for counsel's errors, that the result of the trial would have been different. For these reasons, the Court must respectfully deny the Petitioner's request for an evidentiary hearing and has therefore affirmed the Report and Recommendation of the Magistrate Judge.

D.W.F.