

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

BEAU JAMES MUSACCO,

Petitioner,

v.

Civ. No. 14-683 MV/GBW

GERMAN FRANCO, Warden, and
THE ATTORNEY GENERAL OF
THE STATE OF NEW MEXICO,

Respondents.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND
RECOMMENDED DISPOSITION**

This matter comes before the Court on Petitioner's motion for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 (*doc. 1*). Petitioner filed an amended petition on August 22, 2014, in which he identified several grounds for relief. *See doc. 3*. First, Petitioner raised numerous claims of ineffective assistance of trial counsel. *Id.* He claimed his trial counsel provided ineffective assistance of counsel by failing to: (i) present a meritorious defense, (ii) present expert testimony, (iii) move to dismiss on speedy trial grounds, and (iv) move for change of venue. *Id.* Second, Petitioner argued that the New Mexico Supreme Court erred in rejecting his appeal on the following issues: (i) Officer Carter's warrantless entry into the Econo Lodge Room 216, (ii) the warrantless swabbing of Petitioner's hands; (iii) the admission into evidence of the boots taken from Room 216 despite the allegedly inadequate chain of custody; and (iv)

the alleged insufficiency of the evidence. *Id.* Finally, Petitioner claimed that the state district judge erred in denying the state *habeas* petition without holding an evidentiary hearing. *Id.*

The Magistrate Judge filed his Proposed Findings and Recommended Disposition (PFRD) on August 3, 2016. *Doc. 55.* He recommended dismissal with prejudice of all claims brought by Petitioner, explaining that Petitioner's claims based on evidentiary rulings "should be dismissed because they are not cognizable in federal *habeas* proceedings." *See doc. 55* at 1, 10-12, 35. The Magistrate Judge found that Petitioner's claims based upon the ineffective assistance of trial counsel and sufficiency of evidence should be dismissed "because the state court's rejection of them was not contrary to, or an unreasonable application of, clearly established Federal law." *Id.* at 22-35. With regard to Petitioner's claim based on ineffective assistance of counsel for failure to call Dr. Wright, the Magistrate Judge recommended dismissal upon *de novo* review because "Petitioner has not demonstrated prejudice under *Strickland*." *Id.* at 27-28, 34-35. Finally, the Magistrate Judge concluded that Petitioner's argument regarding the ineffective assistance of state *habeas* counsel is not properly raised in the instant Petition. *Id.* at 5-10, 35.

Neither party has filed objections to the PFRD, and, upon review of the record, I concur with the Magistrate Judge's findings and recommendations. The Court finds that Petitioner's argument regarding the ineffective assistance of state *habeas* counsel is

not raised in the instant Petition. With respect to the claims that are raised, they are subject to dismissal with prejudice.

Wherefore, IT IS HEREBY ORDERED that the Magistrate Judge's Proposed Findings and Recommended Disposition (*doc. 55*) is ADOPTED. Petitioner's claims based on evidentiary rulings, ineffective assistance of trial counsel, and sufficiency of evidence are DISMISSED with prejudice.



MARTHA VÁZQUEZ
UNITED STATES DISTRICT JUDGE