

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PAUL ESCALANTE,

Petitioner,

-against-

9:06-CV-1506 (LEK/ RFT)

JOSEPH SMITH, Superintendent,
Shawangunk Correctional Facility,

Respondent.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on May 7, 2009 by the Honorable Randolph F. Treece, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3 of the Northern District of New York. Report-Rec. (Dkt. No. 13). After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Defendant Escalante, which were filed on May 12, 2009. Objections (Dkt. No. 13).

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A [district] judge... may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 13) is **APPROVED** and

ADOPTED in its **ENTIRETY**; and it is further

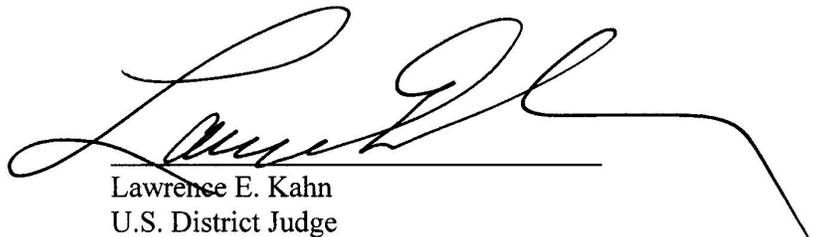
ORDERED, that the Petition for a writ of *habeas corpus* (Dkt. No. 1) be **DENIED**;
and it is further

ORDERED, that because the Court finds Petitioner has not made a “substantial showing of the denial of a constitutional right” pursuant to 28 U.S.C. § 2253(c)(2), no certificate of appealability should issue with respect to any of Petitioner’s claims. See 28 U.S.C. § 2253(c)(2) (“A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.”); see also *Lucidore v. New York State Div. of Parole*, 209 F.3d 107, 112 (2d Cir. 2000); and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: May 18, 2009
Albany, New York



Lawrence E. Kahn
U.S. District Judge