

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RICHARD DUELL,

Petitioner,

vs

9:07-CV-1321

JAMES T. CONWAY, Superintendent, Attica
Correctional Facility,

Respondent.

APPEARANCES:

RICHARD DUELL,
Petitioner, Pro Se
01-B-1692
Attica Correctional facility
Box 149
Attica, New York 14011

HON. ANDREW M. CUOMO
Attorney General of the
State of New York
Attorney for Respondent
Department of Law
120 Broadway
New York, NY 10271

DAVID N. HURD
United States District Judge

OF COUNSEL:

ASHLYN H. DANNELLY, ESQ.
Asst. Attorney General

DECISION and ORDER

The petitioner, Richard Duell, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the above action. By a report- recommendation dated May 6, 2010, the Honorable David E. Peebles, United States Magistrate Judge, recommended that the amended petition for a writ of habeas corpus be dismissed, and that the court not grant petitioner a certificate of appealability in this matter. The respondent has

responded to the report and recommendation urging that the said report and recommendation be adopted. The petitioner has filed timely objections to the report and recommendation.

The petitioner argues that state officials impeded his filing a timely state court appeal and this impeded his presenting this habeas corpus petition because he was prevented from exhausting his state court remedies. However, it did not prevent him from timely filing this habeas corpus petition and arguing that the failure to exhaust should be excused because of the state action and/or the ineffective assistance of his counsel. This he failed to do.

Based upon a de novo determination of the report and recommendation, including the portions to which petitioner has objected, the Report-Recommendation is accepted and adopted in whole. See 28 U.S.C. 636(b)(1); Rule 10, Rules Governing Section 2254 Cases.

Therefore, it is

ORDERED that

1. The amended petition of Richard Duell is DISMISSED;
2. A Certificate of Appealability will not be issued in this matter; and
3. The Clerk is directed to enter judgment accordingly and close the file.

IT IS SO ORDERED.

Dated: July 1, 2010
Utica, New York.



United States District Judge