

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID JONES,

Petitioner,

v.

9:08-cv-1310

WILLIAM LAPE, Superintendent,

Respondent.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

This *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 was referred to the Hon. Andrew T. Baxter, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.4.

The Report-Recommendation dated May 28, 2010 recommended that the petition be denied and dismissed and that no certificate of appealability be issued. The petitioner filed objections to the Report-Recommendation, essentially raising the same arguments presented to the Magistrate Judge.

When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or

modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

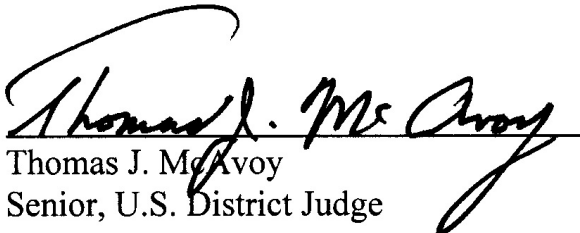
Having reviewed the record *de novo* and having considered the issues raised in the Petitioner's objections, this Court has determined to accept and adopt the recommendation of Magistrate Judge Di Bianco for the reasons stated in the Report-Recommendation. Even excusing any procedural failures on Petitioner's part, the Petition was properly dismissed on the merits.

It is therefore

ORDERED that Petitioner's writ of habeas corpus is **DENIED** and **DISMISSED**. The Court further finds that a certificate of appealability is not warranted.

IT IS SO ORDERED.

Dated: August 5, 2010


Thomas J. McAvoy
Senior, U.S. District Judge