

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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BRIAN SIMMONS,

Petitioner,

v.

9:15-cv-43  
(TJM/DJS)

SUPERINTENDENT,

Respondent.

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**Thomas J. McAvoy, SR. U.S.D.J.**

**DECISION and ORDER**

The Court referred this petition for a writ of *habeas corpus*, brought pursuant to 28 U.S.C. § 2254, to the Hon. Daniel J. Stewart, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Rule 72.3(d) of the Local Rules of the Northern District of New York. The Report-Recommendation, dated February 7, 2017, recommends that the Court dismiss the Petition and decline to issue a certificate of appealability.

Petitioner filed objections to the Report-Recommendation. 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.

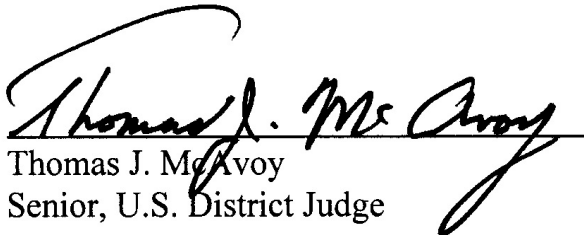
Having reviewed the record *de novo* and having considered the issues raised in the Petitioner’s objections, this Court has determined to accept and adopt the recommendations of Magistrate Judge Peebles for the reasons stated in the Report-Recommendation.

Accordingly:

The Petitioner’s objections to the Report-Recommendation, dkt. # 21, are hereby OVERRULED. The Report-Recommendation, dkt. # 20, is hereby ADOPTED. The Petition for a writ of *habeas corpus*, dkt. # 1, is hereby DENIED and DISMISSED. The Court declines to issue a Certificate of Appealability. The Clerk of Court is directed to CLOSE the case.

**IT IS SO ORDERED**

Dated: October 31, 2017

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