

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

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**CLARENCE MILLER,**

**Petitioner,**

**vs.**

**9:16-CV-512**

**PAUL D. CHAPPLUS, JR.,**

**Respondent.**

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**Thomas J. McAvoy,  
Sr. U.S. District Judge**

**DECISION & ORDER**

This petition for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 was referred to the Hon. Christian F. Hummel, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

The April 2, 2018, Report-Recommendation, dkt. # 22, recommended that the instant petition be denied and dismissed and no certificate of appealability issued. The Magistrate Judge concluded that Petitioner had not made a "substantial showing of the denial of a constitutional right". 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.").

Petitioner filed timely objections to the Report-Recommendation. He contends that the Magistrate Judge erred in finding unexhausted Miller's claim of ineffective assistance

of counsel, and the trial court erred in determining the admissibility of the booking video. Petitioner also insists that he established cause for procedural default. Petitioner further contends that his case represents a fundamental miscarriage of justice and was decided improperly. Finally, he asserts several claims that echo his petition's original claims. Petitioner fails to object to the Magistrate Judge's recommendation that his sufficiency of the evidence claim be denied.

When objections to a magistrate judge's Report-Recommendation are filed, 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 considered the issues raised in the Petitioner's objections, this Court has determined to accept and adopt the recommendation of Magistrate Judge Hummel for the reasons stated in the Report-Recommendation.

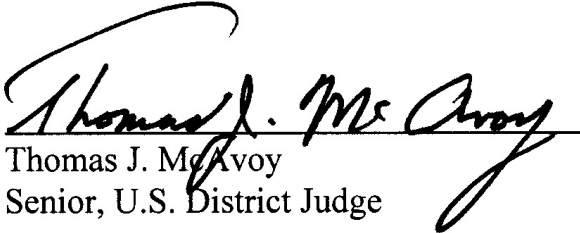
Accordingly,

The Report-Recommendation of Magistrate Judge Hummel, dkt. # 22, is hereby **ACCEPTED** and **ADOPTED**. Petitioner Clarence Miller's petition for a writ of *habeas corpus*, dkt. #1, is hereby **DENIED**. No certificate of appealability will be issued with respect to any of petitioner's claims. Petitioner has not made a "substantial showing of the

denial of a constitutional right” pursuant to 28 U.S.C. § 2253(c)(2).

**IT IS SO ORDERED.**

Dated: June 5, 2018

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