

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LEVI MALLOY,

Petitioner,

v.

9:19-CV-0988
(GTS/ATB)

M. ROYCE, Superintendent of Green Haven
Corr. Facility,

Respondent.

APPEARANCES:

LEVI MALLOY, 14-A-3996
Petitioner, *Pro Se*
Green Haven Correctional Facility
P.O. Box 4000
Stormville, New York 12582

HON. LETITIA A. JAMES
Attorney General for the State of New York
Counsel for Respondent
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New York, New York 10005

LISA E. FLEISCHMANN, ESQ.
Assistant Attorney General

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court in this habeas corpus proceeding filed by Levi Malloy (“Petitioner”) pursuant to 28 U.S.C. § 2254, is the Report-Recommendation of Chief United States Magistrate Judge Andrew T. Baxter recommending that the Petition be denied and dismissed, and that a certificate of appealability be denied. (Dkt. No. 28.) Petitioner has not filed an objection to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Baxter's thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation.¹ Magistrate Judge Baxter employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein, Petitioner's Petition is denied and dismissed, and a certificate of appealability is denied.

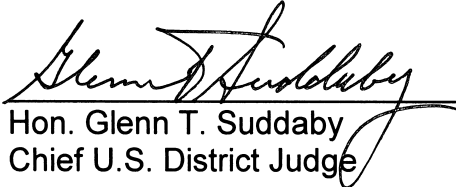
ACCORDINGLY, it is

ORDERED that Magistrate Judge Baxter's Report-Recommendation (Dkt. No. 28) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Petitioner's Petition (Dkt. No. 2) is **DENIED** and **DISMISSED**; and it is further

ORDERED that a certificate of appealability is **DENIED**.

Dated: October 14, 2020
Syracuse, New York


Hon. Glenn T. Suddaby
Chief U.S. District Judge

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).