

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ELLEHEIM MILLER,

Petitioner,

-v-

No. 05 Civ. 5754 (LTS)(DCF)

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent.

-----X

MEMORANDUM OPINION AND ORDER ADOPTING
REPORT AND RECOMMENDATION

Petitioner Elleheim Miller (“Petitioner”) commenced this action on May 26, 2005, by filing a timely Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his conviction in Supreme Court, New York County, on one count of Criminal Sale of a Controlled Substance in the Third Degree and two counts of Criminal Possession of a Controlled Substance in the Third Degree. (Docket entry no. 1.) The case was assigned to the undersigned and referred to Magistrate Judge Debra Freeman. The Respondent submitted an opposition to the Petition, (docket entry nos. 6, 7). Judge Freeman issued a Report and Recommendation, dated August 6, 2009 (the “Report”), which recommends that the Petition should be denied and Petitioner should be denied a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(2). (Docket entry no. 9.) Neither party has filed objections to the Report.

The Court has thoroughly reviewed the Petition, the Respondent’s opposition submission, and the Report. When reviewing the Report, the Court “may accept, reject, or

modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C.A. § 636(b)(1)(C) (West 2008). “To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Service, Inc., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (internal citations and quotation marks omitted). The Court is satisfied that the report contains no clear error. Accordingly, the Court accepts the Report’s recommendations.

CONCLUSION

The Petition is hereby denied and the Petitioner is denied a certificate of appealability because he has not “made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The Clerk of Court is hereby requested to enter judgment accordingly and close this case.

Dated: New York, New York
December 23, 2009



LAURA TAYLOR SWAIN
United States District Judge