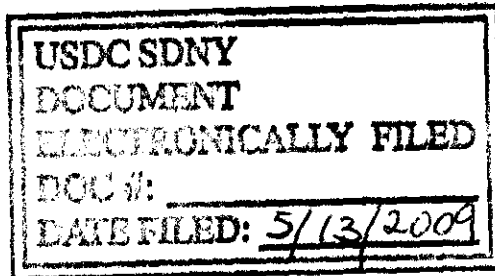


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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JEREMIAH MAYNARD, :

Petitioner, : 07 Civ. 10480 (WHP) (FM)

-against- : MEMORANDUM & ORDER

SUPERINTENDENT WILLIAM D. BROWN, :

Respondent. :

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WILLIAM H. PAULEY III, District Judge:

Jeremiah Maynard (“Maynard”) brings this petition for a writ of habeas corpus challenging his New York State conviction on two counts of rape in the first degree. Following a jury trial in the Bronx, Maynard was sentenced to two consecutive five-year terms of imprisonment, to be followed by five years of post-release supervision. In a thorough and well-reasoned Report and Recommendation dated March 11, 2009 (the “Report”), Magistrate Judge Frank Maas recommended that this Court deny the petition. While Maynard did not file objections to the Report, Respondent objects on the grounds that Magistrate Judge Maas erred by disregarding certain evidence. For the following reasons, this Court adopts Magistrate Judge Maas’s Report and denies the petition.

The underlying facts and procedural history of the state court criminal and post-conviction proceedings are set forth in detail in the Report and are not repeated here. In denying the petition, Magistrate Judge Maas declined to consider certain statement by the prosecutor. Specifically, the prosecutor asserted that Maynard’s trial attorney said he had no difficulty

communicating with Maynard, who is a deaf-mute. Magistrate Judge Maas refused to consider these statements because they were not in an affidavit or declaration. (Report at 21 n.6.)

A district court reviews the findings and recommendations of a magistrate judge and “may accept, reject, or modify [them], in whole or in part.” 28 U.S.C. § 636(b)(1). This Court reviews de novo those parts of the Report to which objections are made, and reviews the remainder for clear error on the face of the record. 28 U.S.C. § 636(b)(1); Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985).

While Respondent is correct that the prosecutor’s statements were set forth in an affidavit responding to Maynard’s habeas petition, those statements are hearsay and were properly disregarded. See Greiner v. Wells, 417 F.3d 305, 325 (2d Cir. 2005) (holding court properly disregarded hearsay statements in an affidavit supporting a habeas petition).

This Court finds that the remainder of the Report is not facially erroneous, and affirms and adopts it.

Accordingly, this Court adopts Magistrate Judge Maas's thorough and well-reasoned Report in its entirety and denies Maynard's petition. Because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not be issued. See 28 U.S.C. § 2253(c). In addition, this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith. See Coppedge v. United States, 369 U.S. 438 (1962). The Clerk of the Court is directed to terminate all pending motions and mark this case as closed.

Dated: May 13, 2009
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.

Copies to:

Norman P. Bock, Esq.
Leibowitz & Bock
225 Broadway, 41st Floor
New York, NY 10007

Rither Alabre, Esq.
Bronx District Attorney Office
198 East 161st Street
Bronx, NY 10451

Hon. Frank Maas
United States Magistrate Judge