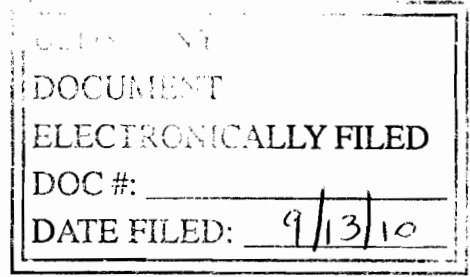


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



_____ x

FELIX GARCIA,

Petitioner,

-against-

09 Civ. 6593 (CM)(JCF)

HAROLD GRAHAM,

Respondent.

_____ x

MEMORANDUM ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION AS THE OPINION OF THE COURT AND DISMISSING THE
PETITION FOR A WRIT OF HABEAS CORPUS

McMahon, J.:

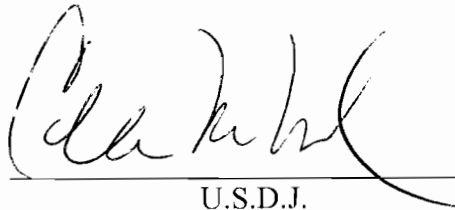
The court has reviewed the Report and Recommendation of The Hon. James C. Francis IV, U.S.M.J., filed June 4, 2010, in which the learned Magistrate Judge recommends that the instant petition for a writ of habeas corpus be denied and this action dismissed.

The time for filing objections to the Report has passed. No objections have been filed and there is no record of any party's asking for additional time to file objections.

The court adopts the Report as its decision and dismisses the petition.

As Petitioner has made no substantial showing of the denial of a constitutional right, there is no question of substance for appellate review. Therefore, no certificate of appealability shall issue. 28 U.S.C. § 2253; see *United States v. Perez*, 129 F. 3d 255, 259-60 (2d Cir. 1997); *Lozada v. United States*, 107 F. 3d 1011 (2d Cir. 1997); *Rodriguez v. Scully*, 905 F. 2d 24 (2d Cir. 1990). I certify, pursuant to 28 U.S.C. § 1915(a), that an appeal from this order would not be taken in good faith. *Coppedge v. United States*, 369 U.S. 438 (1962).

Dated: September 13, 2010



U.S.D.J.

Copies mailed / faxed / handed to counsel on 9/13/10

By First Class Mail To:

Felix Garcia
04-A-2384
Auburn Correctional Facility
P.O. Box 618
Auburn, New York 13024

Karen S. Scholssberg, Esq.
Assistant District Attorney
One Hogan Place
New York, New York 10013

By Hand to Magistrate Judge Francis