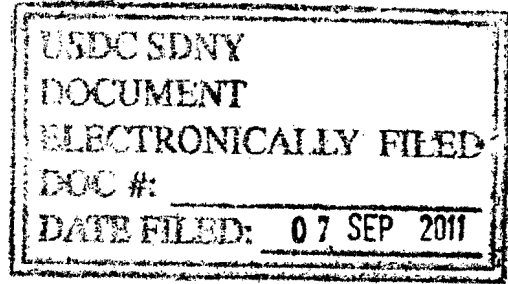


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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RICKY SANTOS,

Petitioner,

-v-

No. 10 Civ. 2896 (LTS)(AJP)

D. ROCK,

Respondent.

-----X

ORDER ADOPTING REPORT AND RECOMMENDATION

Pro se Petitioner Ricky Santos (“Petitioner”) brought this action seeking habeas corpus relief pursuant to 28 U.S.C. § 2254 against Respondent, D. Rock (“Respondent”). On August 5, 2011, Magistrate Judge Andrew J. Peck issued a Report and Recommendation (“Report”), recommending that the petition be denied principally because Petitioner’s excessive sentence claim is not cognizable on habeas review, and because all other claims raised by the petition are procedurally defaulted by Petitioner’s failure to seek leave to appeal the denial of his C.P.L. § 440.10 motion in state court. Neither party has made any objection to the Report, and the time to do so has elapsed.

In reviewing a report and recommendation, a district 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.” Wynn v. Lempke, No. 08 Civ. 3894 (RJS),

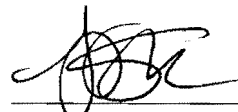
2009 WL 1227362, at *2 (S.D.N.Y. May 5, 2009).

The Court has reviewed thoroughly Judge Peck's Report and finds no clear error in his recommendation. Accordingly, the Court accepts the Report. The petition is hereby denied. A certificate of appealability will not issue. See 28 U.S.C. § 2253(c). In addition, the 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, 444 (1962).

The Clerk of Court is respectfully requested to enter judgment accordingly and close this case.

SO ORDERED.

Dated: New York, New York
September 7, 2011



LAURA TAYLOR SWAIN
United States District Judge