UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL McCRAY,

Petitioner,

-v-

JAMES CONWAY,

Respondent.

10-cv-5138 (RJS) (GWG)
ORDER ADOPTING
RECOMMENDATION AND REPORT

RICHARD J. SULLIVAN, District Judge:

Petitioner Michael McCray brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction in New York Supreme Court, New York County, on counts of rape in the first degree, assault in the first degree, and two counts of criminal sexual act in the first degree, for which he was sentenced to concurrent, indeterminate prison terms of from twenty-two years to life. (Doc. No. 2.) In his petition, Petitioner argues that he is entitled to habeas relief on the grounds that his right to a fair trial was violated by the trial court's refusal to submit the defense of intoxication to the jury. On July 9, 2010, the Court referred this matter to the Honorable Gabriel W. Gorenstein, Magistrate Judge, for a Report and Recommendation. (Doc. No. 3.) Thereafter, Respondent filed its opposition to the petition (Doc. No. 9) and Petitioner filed his reply (Doc. No. 16).

Now before the Court is Judge Gorgenstein's Report and Recommendation (the "Report"), recommending that the petition be denied. In the Report, Judge Gorgenstein informed the parties of the timeframe to file objections and advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections on appeal. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). No party has filed objection to the Report, and the time to do so has long since expired.

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. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). When no

objections to a report and recommendation are made, "a district court need only satisfy itself that there is no clear error on the face of the record." *Boyd v. City of New York*, 12-cv-3385 (PAE) (JCF), 2013 WL 452313, *1 (S.D.N.Y. Feb. 6, 2013) (citation and internal quotation marks omitted); *see also Lang ex rel. Morgan v. Astrue*, 05-cv-7263 (KMK) (PED), 2009 WL 3747169, *1 (S.D.N.Y. Nov. 6, 2009) ("[W]here a party does not submit an objection, a district court need only satisfy itself that there is no clear error on the face of the record.") (citation and internal quotation marks omitted).

Having reviewed Judge Gorgenstein's comprehensive and well-written sixteen page Report, the Court finds that the reasoning and conclusions set forth therein are not facially or clearly erroneous. The Court agrees that New York law did not require an intoxication charge given that McCray was able to provide detailed testimony at trial of his purposeful conduct on the night in question, which is entirely inconsistent with intoxication. Furthermore, the Report correctly notes the absence of any Supreme Court precedent requiring an intoxication charge be given to a jury. Accordingly, the Court adopts the Report in its entirety.

IT IS HEREBY ORDERED THAT Petitioner's petition for a writ of habeas corpus is DENIED. The Clerk of the Court is respectfully directed to terminate the petition pending at Doc. No. 2 and to close this case.

SO ORDERED.

Dated: September 30, 2014
New York, New York

RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

A copy of this Order has been sent to:

Michael McCray
05-R-4153
Great Meadow Correctional Facility
Box 51
Comstock, NY 12821-0051