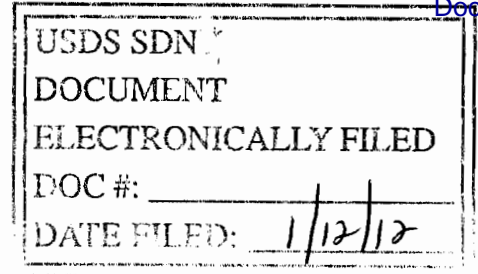


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



LEROY JOHNSON,

Petitioner

-against-

11 Civ. 1089 (CM)(AJP)

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

DECISION AND ORDER ACCEPTING REPORT, ADOPTING
MAGISTRATE JUDGE'S RECOMMENDATION, AND DISMISING
PETITION FOR A WRIT OF HABEAS CORPUS

McMahon, J.:

The Hon. Andrew J. Peck, U.S.M.J., filed a Report recommending that the instant petition for a writ of habeas corpus be denied, and the case dismissed, on August 3, 2011. Petitioner was given an extension of time to file objections to the Report until November 22, 2011. Petitioner has filed no objections. His protest that he "never knew that I could send the magistrate judge no legal papers" lacks credibility. The docket sheet reflects that he was notified by mail of his right to "reply (respond) to the state's papers when they file them" by Judge Peck in a personal note. (Docket Entry #14); however, the docket sheet also reflects that this mail was returned to the petitioner because his address changed and the court had not yet been notified. But that is not all the story. On August 18, 2011, petitioner wrote to the Clerk of the Court asking for an extension of time to file objections to the Report and Recommendation, and wrote again to this court on October, 31, 2011. So Petitioner was well aware that he had the ability to respond to the Report and explain why Judge Peck's recommendation was incorrect. It is now January 12, 2012, and we have still heard nothing.

I have reviewed the petition and the Report. I see no flaw in its reasoning. Accordingly, I accept the Report, adopt the Recommendation, deny the petition and direct the Clerk of the Court to enter judgment dismissing the case.

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

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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: January 12, 2012



U.S.D.J.

BY FIRST CLASS MAIL TO PETITIONER, P.O. Box 51, Comstock, NY 12821-0051
BY FIRST CLASS MAIL TO Susan Axelrod, Esq., Counsel for Respondent
BY HAND TO MAGISTRATE JUDGE PECK