

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
FERNANDO MADERA,

Petitioner,

-against-

CALVIN O. RABSATT,

Respondent.

ANALISA TORRES, District Judge:

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 12/4/2017

13 Civ. 8058 (AT) (RLE)

**ORDER ADOPTING
REPORT AND
RECOMMENDATION**

On October 29, 2013, Petitioner *pro se*, Fernando Madera, filed a petition for a writ of habeas corpus in the United States District Court for the Northern District of New York. ECF No. 1. Petitioner seeks to set aside his 2011 conviction in New York state court on the basis of an allegedly flawed police line-up and the state court's ruling on the admissibility of his criminal record. By order dated November 1, 2013, the Honorable David N. Hurd transferred the case to this Court. ECF No. 3. On January 29, 2014, the Court referred the case to the Honorable Ronald L. Ellis. ECF Nos. 10, 27.

Before the Court is a Report and Recommendation ("R&R") of Judge Ellis, which proposes that Petitioner's habeas corpus application be granted pursuant to 28 U.S.C. § 2254. ECF No. 29. Despite notification of the right to object to the R&R, no objections were filed, and the time to do so has passed. *See* R&R at 42; Fed. R. Civ. P. 72(b)(2). When no objection is made, the Court reviews the R&R for clear error. *Santiago v. Colvin*, 12 Civ. 7052, 2014 WL 1092967, at *1 (S.D.N.Y. Mar. 17, 2014). In a well-reasoned decision, Judge Ellis found that the sole evidence connecting Petitioner to the robbery, witness identification, was unreliable. The Court finds no clear error. Accordingly, the Court ADOPTS Judge Ellis' R&R in its entirety.

It is ORDERED that the petition for a writ of habeas corpus is GRANTED. The Clerk of Court is directed to issue a writ of habeas corpus commanding Respondent to release and discharge Petitioner from custody forthwith, mail a copy of this order to Petitioner *pro se*, and close this case.

SO ORDERED.

Dated: December 4, 2017
New York, New York



ANALISA TORRES
United States District Judge