

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IVAN PEREZ,

Petitioner,

-v.-

DONITA MCINTOSH, Superintendent,
Clinton Correctional Facility,

Defendant.

21 Civ. 7339 (JHR) (GWG)

ORDER ADOPTING REPORT
AND RECOMMENDATION

JENNIFER H. REARDEN, District Judge:

On August 31, 2021, pursuant to 28 U.S.C. § 2254, *pro se* Petitioner Ivan Perez filed a petition for a writ of habeas corpus (the “Petition”) in connection with his October 24, 2016 state-court convictions for first-degree manslaughter and gang assault.¹ *See* ECF No. 2. On September 7, 2021, the Petition was referred to Magistrate Judge Gabriel W. Gorenstein for a Report and Recommendation. *See* ECF No. 7. On September 14, 2022, Judge Gorenstein issued a Report and Recommendation (the “Report”) recommending that the Court deny the Petition in its entirety. *See* ECF No. 17. On October 4, 2022, the judge previously assigned to this case granted Petitioner’s request for a sixty-day extension of time to file objections to the Report, setting December 5, 2022 as the new deadline.² *See* ECF No. 19. No objections were filed. For the reasons stated below, the Court adopts the Report in full.

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. § 636(b)(1)(C). A district court “must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *see also United*

¹ Familiarity with the facts, which are set forth in detail in the Report and Recommendation, is assumed. *See* ECF No. 17.

² This case was initially assigned to the Honorable Edgardo Ramos.

States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997). “When no objections are filed, the Court reviews [a Report and Recommendation] on a dispositive motion for clear error.” *See, e.g., Andrews v. LeClaire*, 709 F. Supp. 2d 269, 271 (S.D.N.Y. 2010) (finding no clear error in Report and Recommendation, as to which no objections were filed, and adopting it in full); *accord Manbeck v. Micka*, 640 F. Supp. 2d 351, 361 (S.D.N.Y. 2009). “Furthermore, if as here . . . the magistrate judge’s report states that failure to object will preclude appellate review and no objection is made within the allotted time, then the failure to object generally operates as a waiver of the right to appellate review. As long as adequate notice is provided, the rule also applies to *pro se* parties.” *Hamilton v. Mount Sinai Hosp.*, 331 F. App’x 874, 875 (2d Cir. 2009) (internal citations omitted); *see* ECF No. 17 at 18.

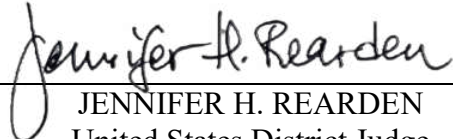
As no objections were filed here, the Court has reviewed the Report for clear error. The Court finds that Judge Gorenstein’s well-reasoned Report is not facially erroneous. Accordingly, the Court adopts the Report in its entirety and, for the reasons set forth therein, denies the Petition for a writ of habeas corpus.

The Court will not issue a certificate of appealability because Petitioner has not made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c); *Matthews v. United States*, 682 F.3d 180, 185 (2d Cir. 2012). Moreover, 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, 444-45 (1962).

Accordingly, the Report is adopted in its entirety. The Clerk of Court is directed to dismiss the Petition, mail a copy of this Order to Petitioner, and close this case.

SO ORDERED.

Dated: February 5, 2024
New York, New York



JENNIFER H. REARDEN
United States District Judge