UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY COLEMAN,	:	
	:	
Petitioner,	:	15-cv-4904 (NSR)
	:	
-against-	:	OPINION & ORDER
	:	
STEVEN RACETTE,	:	
	:	
Respondent.	:	

NELSON S. ROMÁN, United States District Judge:

Anthony Coleman ("Petitioner"), proceeding *pro se*, seeks a writ of habeas corpus under 28 U.S.C. § 2254. ("Petition," ECF No. 2.) Now pending before the Court is a Report and Recommendation ("R&R") issued by Magistrate Judge Judith C. McCarthy, pursuant to 28 U.S.C. § 636(b) and Federal Rules of Civil Procedure Rule 72(b), recommending that the petition be denied and that no certificate of appealability be issued. (ECF No. 24.) Petitioner has filed no objections to the R&R. For the following reasons, the Court adopts the R&R, and the petition is DENIED.

BACKGROUND

After a trial in March 2011, a jury found Petitioner guilty of one count of criminal possession of a weapon in the second degree. Petitioner, a violent predicate felony offender, was sentenced to ten years imprisonment to run consecutively with Petitioner's incarceration for an unrelated criminal matter with five years of post-release supervision. The Court presumes familiarity with the factual and procedural background of this case, including the underlying criminal proceedings and Petitioner's appellate challenges to his conviction.

Following, Petitioner's convictions and the exhaustion of his state court appeals, he timely filed the instant Petition on June 18, 2015. (ECF No. 2.) He seeks habeas relief on the grounds that the trial court admitted evidence obtained during an unlawful stop, the state court failed to admit a statement made by Montay Vaden, there were issues with jury selection, and Petitioner had ineffective assistance of counsel. Respondent filed an opposition on November 2, 2015 (ECF No. 15) and Petitioner filed a response to the opposition on January 7, 2016. (ECF No. 19.)

STANDARDS OF REVIEW

A magistrate judge may "hear a pretrial matter [that is] dispositive of a claim or defense" if so designated by a district court. Fed. R. Civ. P. 72(b)(1); accord 28 U.S.C. § 636(b)(1)(B). In such a case, the magistrate judge "must enter a recommended disposition, including, if appropriate, proposed findings of fact." Fed. R. Civ. P. 72(b)(1); accord 28 U.S.C. § 636(b)(1). Where a magistrate judge issues a report and recommendation,

> [w]ithin fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of 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); accord Fed. R. Civ. P. 72(b)(2), (3). However, "[t]o 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." Wilds v. United Parcel Serv., Inc., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (quoting Nelson v. Smith, 618 F.

Supp. 1186, 1189 (S.D.N.Y. 1985) (internal quotation marks omitted); accord Feehan v. Feehan, No. 09-CV-7016(DAB), 2011 WL 497776, at *1 (S.D.N.Y. Feb. 10, 2011); see also Fed. R. Civ. P. Rule 72 advisory committee note (1983 Addition, Subdivision (b)) ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.").

DISCUSSION

Here, the R & R was issued on February 27, 2019. Petitioner never filed an objection, and the deadline for objections has passed. Since Petitioner failed to file any objections, the Court has reviewed Judge McCarthy's R&R for clear error and found none. It is clear from the record that the state courts provided Petitioner with an opportunity for full and fair litigation of his Fourth Amendment claim, and, therefore, Petitioner cannot be granted federal habeas corpus relief on that issue. Additionally, as Judge McCarthy notes, Petitioner objects to the state court's determination to exclude Montay Vaden's testimony as hearsay, but this is a state law issue. Petitioner did not identify any federal constitutional right violated by the state court's determination in his state appellate briefs and so his claim is procedurally barred. Petitioner's jury selection claim is likewise procedurally barred because the state appellate court held that the claim was unpreserved for appellate review. Finally, Judge McCarthy correctly determined that all of Petitioner's ineffective assistance of counsel claims fell short of the standard for ineffective assistance of counsel established in Strickland v. Washington, 466 U.S. 668 (1984).

CONCLUSION

For these reasons, the Court adopts Judge McCarthy's R&R in its entirety. The petition for a writ of habeas corpus is therefore DENIED. The Clerk of Court is respectfully directed to terminate the motion at ECF No. 24, enter judgment accordingly, and close this case. The Clerk of the Court is further directed to mail a copy of this Opinion to Petitioner at his address on the docket.

As Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253(c)(2); *Love v. McCray*, 413 F.3d 192, 195 (2d Cir. 2005); *Lozada v. United States*, 107 F.3d 1011, 1017 (2d Cir. 1997), *abrogated on other grounds by United States v. Perez*, 129 F.3d 225, 259–60 (2d Cir. 1997). The Court certifies pursuant to 18 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purposes of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

Dated: April 2, 2019
White Plains, New York

SO ORDERED:

NELSON S. ROMÁN
United States District Judge