

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RASHEEN MILLS,
Petitioner,

v.

ORDER
03-CV-341

SUPERINTENDENT ROY A. GIRDICH,
Upstate Correctional Facility,
Respondent.

This case was referred to Magistrate Judge Victor E. Bianchini, pursuant to 28 U.S.C. § 636(b)(1). On April 28, 2003, petitioner filed a petition for a writ of habeas corpus. On November 13, 2008, petitioner filed a motion to stay and amend the petition for a writ of habeas corpus. On January 22, 2009, Magistrate Judge Bianchini filed a very thorough Report and Recommendation, recommending that the original petition for a writ of habeas corpus be dismissed and that the petitioner's motion to stay and amend the petition be denied.

Petitioner filed objections to the Report and Recommendation on March 20, 2009 and the respondent filed an affidavit in opposition to petitioner's objections.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and

Recommendation, and after reviewing the submissions, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Bianchini's Report and Recommendation, petitioner's petition to stay and amend the petition for a writ of habeas corpus is denied and the petition for a writ of habeas corpus is dismissed.

The Court finds that petitioner has failed to make a substantial showing of the denial of a constitutional right and, therefore, no certificate of appealability shall issue. See 28 U.S.C. § 2253(c)(2).

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: May 15, 2009