

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WILLIE SCOTT,

Petitioner,

v.

17-CV-49
DECISION & ORDER

SUSAN KICKBUSH, Superintendent of
Gowanda Correctional Facility,

Respondent.

On January 18, 2017, the petitioner, Willie Scott, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Docket Item 1. On July 5, 2017, the respondent filed her response. Docket Item 5. Scott did not file a reply, and the time to do so expired. See Docket Item 2.

On October 17, 2019, this Court referred this case to United States Magistrate Judge H. Kenneth Schroeder, Jr., for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 8. On March 2, 2020, Judge Schroeder issued a Report and Recommendation (“R&R”) finding that Scott’s application for a writ of habeas corpus should be denied and that his petition should be dismissed. Docket Item 9. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).¹

¹ On April 21, 2020, the copy of the R&R that initially was mailed to Scott was returned as undeliverable. Docket Item 10. On April 23, 2020, this “Court confirmed through the New York State Department of Corrections and Community Supervision’s website and by phone that the petitioner is still located at the Gowanda Correctional Facility, where the mail was sent.” Docket Item 11. Accordingly, the Court “sent another copy of the R&R to the petitioner.” *Id.* The Court explained that “[o]bjections

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Schroeder's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Schroeder's recommendation to deny Scott's application for a writ of habeas corpus and dismiss his petition.

For the reasons stated above and in the R&R, Scott's application for a writ of habeas corpus is DENIED, and his petition, Docket Item 1, is DISMISSED. The Clerk of the Court shall close the file.

SO ORDERED.

Dated: August 4, 2020
Buffalo, New York

/s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

[were] due fourteen days from receipt." *Id.* Over three months have passed and the second copy of the R&R has not been returned as undeliverable. Nor has Scott submitted an objection.