

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

|                            |   |                              |
|----------------------------|---|------------------------------|
| Daniel Evan Wacht,         | ) |                              |
|                            | ) |                              |
| Petitioner,                | ) | <b>ORDER ADOPTING REPORT</b> |
|                            | ) | <b>AND RECOMMENDATION</b>    |
| vs.                        | ) |                              |
|                            | ) | Case No. 1:15-cv-92          |
| Colby Braun, Warden, NDSP, | ) |                              |
|                            | ) |                              |
| Respondent.                | ) |                              |

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The Petitioner, Daniel Wacht, filed a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody on July 9, 2015. See Docket No. 1. Wacht set forth five claims for relief, including his Fourth Amendment rights were violated because of illegal searches and seizures, his Sixth Amendment right to a fair and impartial jury was violated, evidence was presented in violation of state and federal criminal procedure rules and in violation of his right to due process, and his trial attorney was ineffective. On September 9, 2015, the Respondent filed a motion to dismiss the petition. See Docket No. 7.

Magistrate Judge Charles S. Miller, Jr. reviewed the petition and motion to dismiss and issued a Report and Recommendation on March 25, 2016. See Docket No. 15. Judge Miller recommended Wacht’s petition be dismissed, the Respondent’s motion to dismiss be granted, and a certificate of appealability not be issued. The parties were given fourteen (14) days to file objections to the Report and Recommendation. An objection to the Report and Recommendation was filed on April 5, 2016. See Docket No. 16.

The Court has carefully reviewed Judge Miller’s Report and Recommendation, the objection to the Report and Recommendation, the relevant case law, and the entire record, and

finds the Report and Recommendation to be persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 15) in its entirety, and **ORDERS** the following:

- 1) The Court **GRANTS** the Respondent's Motion to Dismiss (Docket No. 7) and **DENIES** Wacht's Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (Docket No. 1).
- 2) The Court certifies that an appeal from the denial of this petition may not be taken in forma pauperis because such an appeal would be frivolous and cannot be taken in good faith.
- 3) The Court finds dismissal of the petition is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, a certificate of appealability will not be issued by this Court. Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983). If the Petitioner desires further review of his motion he may request issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals.

**IT IS SO ORDERED.**

Dated this 6th day of April, 2016.

*/s/ Daniel L. Hovland*  
Daniel L. Hovland, District Judge  
United States District Court