

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Marcos P. Bocanegra,)	CASE NO. 3:09 CV 2832
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
vs.)	
)	
Margaret A. Beightler, Warden,)	<u>Amended Memorandum of Opinion</u>
)	<u>and Order</u>
)	
Respondent.)	

Introduction

This matter is before the Court upon the Report and Recommendation of Magistrate Judge David S. Perelman (Doc. 8) which recommends dismissal of the Petition for Writ of Habeas Corpus pending before the Court. For the following reasons, the Report and Recommendation is ACCEPTED.

Petitioner, Marcos P. Bocanegra, commenced this action with the filing of a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The Magistrate Judge issued his Report and Recommendation recommending that the Petition be dismissed. Petitioner has failed to file

objections to the Report and Recommendation despite being granted additional time to do so.

Standard of Review

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, “The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.” When no objections have been filed this Court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See* Advisory Committee Notes 1983 Addition to Federal Rule of Civil Procedure 72.

Discussion

Plaintiff was sentenced to three years imprisonment and was classified as a sexual offender after he entered his guilty plea to one count of sexual battery stemming from an incident involving a 17 year old female who was more than 10 years younger than petitioner. The Magistrate Judge rejected petitioner’s claim that ineffective assistance of counsel caused him to involuntarily enter the guilty plea. The Magistrate Judge reviewed the state appellate court’s reasoning and conclusion regarding this claim and found no unreasonable application of the rule of *Strickland* to the facts of the case or an unreasonable determination of the facts in light of the evidence presented. As to petitioner’s second ground, the Magistrate Judge reviewed the transcript of the plea proceeding and found petitioner’s argument that his plea was involuntary to be unconvincing. This Court fully agrees with the reasoning and conclusions of the Magistrate Judge and, having found no clear error, completely adopts his factual and legal conclusions as its own and incorporates them herein by reference. Accordingly, for the reasons set forth in the Magistrate Judge’s Report and Recommendation, the Petition for Writ of Habeas Corpus is

denied.

Conclusion

For the foregoing reasons, the Report and Recommendation recommending dismissal of the Petition for Writ of Habeas Corpus is accepted. Furthermore, the Court determines, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed.R.App.P. 22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 8/11/10