

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

KENNETH R. BAILEY, SR.,
Petitioner

v.

STATE OF VERMONT,
Respondent

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File No. 1:10-cv-213-jgm

ORDER

The Magistrate Judge's Amended Report and Recommendation (“Amended R&R”) filed July 28, 2011 (Doc. 28) recommends that Petitioner Kenneth R. Bailey, Sr.’s petition for a writ of habeas corpus under 28 U.S.C. § 2254 be denied, because Bailey’s claims of error under state law are not cognizable on habeas review, and the rejection of his claim of ineffective assistance of counsel was not contrary to federal law.

When the initial May 3, 2011 Report and Recommendation (Doc. 22) was filed, Mr. Bailey timely filed an Objection (Doc. 26), and has not filed any new objections to the Amended R&R. Mr. Bailey’s Objection has been considered in reviewing the Amended R&R, which merely corrected references to certain filings in this case. Having reviewed the Amended R&R and Mr. Bailey’s objections de novo, the Court finds the objections to be without merit. See Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b) (requiring district court to determine de novo any part of the magistrate judge’s disposition for which objections have been properly made).

The Amended Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1). The petition for writ of habeas corpus (Doc. 1) is DENIED and this case is DISMISSED.

Pursuant to Fed. R. App. P. 22(b), the Court DENIES petitioner a certificate of appealability (“COA”) because the petitioner failed to make a substantial showing of a denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). The Court rejects the petition on its merits because the petitioner has failed to demonstrate that reasonable jurists would find the Court’s “assessment of the constitutional claims debatable or wrong.” Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 1604, 146 L. Ed. 2d 542 (2000).

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 12th day of September, 2011.

/s/ J. Garvan Murtha
Honorable J. Garvan Murtha
United States District Judge