



Borges v. Bradt

2015 | Cited 0 times | N.D. New York | January 7, 2015

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK

CESAR A. BORGES,

Petitioner,

9:14-CV-0060 v. (GTS/ATB) MARK BRADT, Superintendent,

Respondent. _____ APPEARANCES: OF COUNSEL: CESAR A. BORGES, 04-B-1560 Petitioner, Pro Se Five Points Correctional Facility Caller Box 119 Romulus, New York 14541 HON. ERIC T. SCHNEIDERMAN ALYSON J. GILL, ESQ. Attorney General for the State of New York Assistant Attorney General Counsel for Respondent 120 Broadway New York, New York 10271 GLENN T. SUDDABY, United States District Judge

DECISION and ORDER Currently before the Court, in this habeas corpus proceeding filed pro se by Cesar A. Borges (“Petitioner”) pursuant to 28 U.S.C. § 2254, is a Report-Recommendation by United States Magistrate Judge Andrew T. Baxter recommending that the Petition be denied and dismissed pursuant to 28 U.S.C. § 2253(c)(2), and that a certificate of appealability not issue. (Dkt. No. 14.) Petitioner has not filed an Objection to the Report-Recommendation and the time in which to do so has expired.

When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a “clear error” review, “the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Id.; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) (“I am permitted to adopt those sections of [a magistrate judge’s] report to which no specific objection is made, so long as those sections are not facially erroneous.”) (internal quotation marks omitted).

Here, based upon a careful review of this matter, the Court can find no clear error with Magistrate Judge Baxter’s Report-Recommendation. (Dkt. No. 14.) Magistrate Judge Baxter employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. (Id.) As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons stated therein.

ACCORDINGLY, it is ORDERED that Magistrate Judge Baxter’s Report-Recommendation (Dkt. No. 14) is ACCEPTED and ADOPTED in its entirety; and it is further



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ORDERED that the Petition (Dkt. No. 1) in this matter is DENIED and DISMISSED in its entirety; and it is further

ORDERED that a certificate of appealability shall not issue with respect to any of the claims set forth in the Petition, because Petitioner has not made a “substantial showing of the denial of a constitutional right” pursuant to 28 U.S.C. § 2253(c)(2). Dated: January 7, 2015

Syracuse, New York