

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF LA

2008 JUL -8 P 4:02

ALBERT WOODFOX
(DOC# 72148)

CIVIL ACTION

BY DEPUTY CLERK

VERSUS

NO. 06-789-D-M2-JJB

BURL CAIN, ET AL

RULING

The court has carefully considered the petition, the record, the law applicable to this action, and the Report and Recommendation of the United States Magistrate Judge Christine Noland dated June 10, 2008 (Doc. 33). The State filed an Objection (Doc. 34) which the court has considered in conducting a *de novo* review of the record.

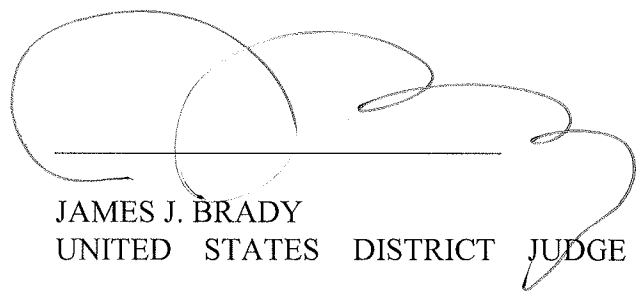
The court hereby approves the report and recommendation of the magistrate judge and adopts it as the court's opinion herein. The court hereby supplements the reason of the magistrate judge as follows. The State claims that the magistrate judge was incorrect in finding Plaintiff's counsel deficient for failing to object to a portion of Mr. Sinquefield's testimony, and the State points to three times that Plaintiff's counsel did object during Mr. Sinquefield's testimony. However, the State failed to note that the magistrate judge referred to a specific portion of Mr. Sinquefield's testimony during which Plaintiff's counsel did not object even though he should have. For this reason, among others, the magistrate judge was correct in finding Plaintiff's counsel deficient.

The State also claims that the magistrate judge incorrectly found Plaintiff's counsel deficient for failing to object to admission of Hezekiah Brown's 1973 transcribed testimony. The State references pages 2580-2637 of the record as proof of this claim. However, if those pages of the record exist, this court has not been provided with them. This court refuses to entertain a claim

based on alleged evidence not in the provided record.

Accordingly, the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) filed by petitioner, Albert Woodfox, is GRANTED.

Baton Rouge, Louisiana, this 8th day of July, 2008.



JAMES J. BRADY
UNITED STATES DISTRICT JUDGE