

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CHRISTOPHER S. THORNTON

v.

C.A. No. 02-412-T

ASHBEL T. WALL, Director of
the Rhode Island Department
of Corrections

MEMORANDUM AND ORDER

Christopher Thornton has filed a petition, under 28 U.S.C. § 2254, to set aside his state court conviction. A magistrate judge has issued a very thoughtful and comprehensive Report and Recommendation in which he has recommended that Thornton's petition be denied. Report & Recommendation (Hagopian, Mag. J.) (March 31, 2003). There is no need to repeat what the magistrate judge already has said. This Court accepts the magistrate judge's recommendation, essentially for the reasons he has stated, but with the following observations.

In rejecting Thornton's claim that the trial judge unduly impaired his right of self representation by excluding him from side-bar conferences during jury voir dire, the magistrate judge relied, in part, on Thornton's failure to establish that any such conferences took place. See R&R at 27. The only basis for drawing an inference that such conferences occurred is the statement in the brief that the Respondent filed with the Rhode Island Supreme Court that the court reporter did not transcribe "the substance of most bench conferences, including those during individual jury voir

dire.'" See State v. Thornton, 800 A.2d 1016, 1056 (R.I. 2002) (Flanders, J., dissenting). However, if any side bar conferences occurred during voir dire over Thornton's objection, one would expect that both the fact that a conference took place and Thornton's objection would be reflected in the record. Since there is no record, here, there is no sufficient basis for inferring that any such conferences took place.

Even if such conferences did occur and even if Thornton, himself, did not participate, his right of self-representation was not violated. Thornton does not claim that any such conferences took place without the participation of standby counsel. Nor is there any indication that counsel's participation deprived Thornton of control over the case he presented to the jury or that it created a perception among the jurors that he was not representing himself. Thornton made his own opening statement and closing argument, examined and cross-examined witnesses, and even moved, successfully, for judgment of acquittal on one charge.

For these reasons and for the reasons stated by the magistrate judge, Thornton's petition is denied and dismissed.

IT IS SO ORDERED.

Ernest C. Torres

Date: , 2005