

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

FILED
2017 JUN 14 PM 4:54
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: *[Signature]*
DEPUTY CLERK

JARED MORRISON

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vs.

NO: MO:15-CV-00069-RAJ

WILLIAM STEPHENS

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE AFTER *DE NOVO* REVIEW**

Before the Court in the above styled and numbered cause is Petitioner Jared Morrison's Petition for Writ of Habeas Corpus by a Person in State Custody and Memorandum in Support. [docket numbers 2 & 5]. See 28 U.S.C. §2254. Petitioner's petition was referred to the United States Magistrate Judge for findings and recommendations. See 28 U.S.C. §636(b). The Magistrate Judge signed the Report and Recommendation on March 13, 2017, in which he finds and recommends that Petitioner's application for writ of habeas corpus should be denied. [docket number 19]. All parties received the report and recommendation by March 21, 2017. [docket number 21]. On March 27, 2017, Petitioner filed a Motion for Extension of Time to File his Objections to the Report and Recommendation of the United States Magistrate Judge. [docket number 22]. On April 3, 2017, this Court granted his Extension of Time through April 21, 2017. [docket number 23]. On April 10, 2017, Petitioner filed his first, hand-written, sixty-nine page set of Objections. [docket number 26]. On April 19, 2017, Petitioner filed an nearly identical forty-nine page second set of Objections, although these were type-written. [docket number 27].

The Court has considered both sets of Petitioner's extensive objections and in light of those objections, the court has undertaken a *de novo* review of the entire case file. The court will overrule the objections.

The court finds and concludes that the Magistrate Judge's Report and Recommendation is correct and should be accepted and adopted for the reasons stated therein. *See* Fed. R. Civ. P. 72.

An appeal may not be taken to the court of appeals from a final order in a habeas corpus proceeding "unless a circuit justice or judge issues a certificate of appealability." 28 U.S.C. §2253(c)(1)(A). Pursuant to Rule 11 of the Federal Rules Governing Section 2254 Cases, effective December 1, 2009, the District Court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.

A certificate of appealability may issue only if a petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. §2253(c)(2). The Supreme Court fully explained the requirement associated with a "substantial showing of the denial of a constitutional right" in *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595 (2000). In cases where a district court rejected a petitioner's constitutional claims on the merits, "the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* "When a district court denies a habeas petition on procedural grounds without reaching the petitioner's underlying constitutional claim, a COA should issue when the petitioner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.*

In this case, reasonable jurists could not debate the denial of Petitioner's §2254 application on substantive or procedural grounds, nor find that the issues presented are adequate to deserve encouragement to proceed. *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S. Ct. 1029 (2003) (citing *Slack*, 529 U.S. at 484). Accordingly, a certificate of appealability shall not be issued.

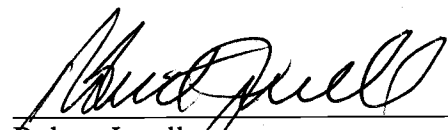
IT IS ORDERED that Petitioner's Objections to the Report and Recommendation are **OVERRULED**.

IT IS FURTHER ORDERED that the Report and Recommendation of the United States Magistrate Judge filed March 13, 2017 is **ACCEPTED AND ADOPTED**.

IT IS FURTHER ORDERED that Petitioner's Application for Writ of Habeas Corpus is **DENIED**.

IT IS FINALLY ORDERED that a Certificate of Appealability is **DENIED**.

SIGNED on this 14 day of June, 2017.



Robert Junell
Senior United States District Judge