

****NOT FOR PRINTED PUBLICATION****

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

QUINCY DESHAN BUTLER

§

VS.

§

CIVIL ACTION NO. 9:16-CV-210

DIRECTOR, TDCJ-CID

§

MEMORANDUM OPINION ORDER OVERRULING OBJECTIONS AND
ACCEPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner, Quincy Deshan Butler, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Keith Giblin, United States Magistrate Judge, at Lufkin, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends petitioner's application to proceed *in forma pauperis* on appeal be denied (docket entry no. 147).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, and pleadings. Petitioner filed objections to the Report and Recommendation of United States Magistrate Judge (docket entry no. 148). This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court finds petitioner's objections lacking in merit.

Petitioner filed a Notice of Appeal on April 13, 2020 (docket entry no. 137). Petitioner then filed a Motion for Leave to Appeal *In Forma Pauperis* (docket entry no. 139). On July 7, 2020, the

Magistrate Judge entered a Report and Recommendation, recommending petitioner's application to proceed *in forma pauperis* be denied as petitioner had a current balance of \$3,081.57 (docket entry no. 147). The Magistrate Judge recommended petitioner pay the full \$505.00 filing fee. Petitioner filed Objections to the Report and Recommendation (docket entry no. 148). Petitioner stated the income trust statement did not accurately reflect his balance and income. Petitioner, however, did not provide a current copy of his income trust statement to corroborate this assertion. The Magistrate Judge then ordered petitioner to provide the Court with a current copy of his income trust statement (docket entry no. 149).

Petitioner filed a copy of his income trust statement on August 17, 2020 (docket entry no. 151). The income trust statement is dated August 11, 2020 and shows that petitioner has a balance of \$1,483.98. Petitioner's six month average deposit is \$505.02 and his six month average balance is \$1,810.73. Petitioner has sufficient funds to pay the full \$505.00 filing fee.

Accordingly, the objections of petitioner are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ACCEPTED**. Petitioner has an additional thirty (30) days from entry below to pay the full \$505.00 filing fee. Petitioner is admonished that failure to comply will result in dismissal of petitioner's appeal for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b).

So ORDERED and SIGNED, Sep 02, 2020.



Ron Clark
Senior Judge