

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

MARK ADAM SHAW,

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Petitioner,

)

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vs.

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Case No. 1:14-cv-00490-CLS-HGD

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JOHN T. RATHMAN, Warden,

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Respondent.

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MEMORANDUM OPINION

On October 1, 2015, the magistrate judge’s report and recommendation was entered and the parties were allowed therein fourteen (14) days in which to file objections to the recommendations made by the magistrate judge. On October 9, 2015, petitioner filed objections to the magistrate judge’s report and recommendation. With the court’s permission, petitioner filed an amendment to his objections on October 26, 2015. He filed a further amendment to his objections, without obtaining court approval, on January 4, 2016. Nonetheless, the court will consider the additional amendment to the objections.

After careful consideration of the record in this case and the magistrate judge’s report and recommendation and the petitioner’s objections thereto, the court hereby

ADOPTS the report of the magistrate judge and ACCEPTS the recommendation that the petition for writ of habeas corpus be denied.

Pursuant to Rule 11 of the *Rules Governing § 2254 Cases*,¹ the Court has evaluated the claims within the petition for suitability for the issuance of a certificate of appealability (COA). *See* 28 U.S.C. § 2253.

Rule 22(b) of the Federal Rules of Appellate Procedure provides that when an appeal is taken by a petitioner, the district judge who rendered the judgment “shall” either issue a COA or state the reasons why such a certificate should not issue. Pursuant to 28 U.S.C. § 2253(c)(2), a COA may issue only when the petitioner “has made a substantial showing of the denial of a constitutional right.” This showing can be established by demonstrating that “reasonable jurists could debate whether (or for that matter, agree that) the petition should have been resolved in a different manner” or that the issues were “adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 1603-04, 146 L.Ed.2d 542 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4, 103 S.Ct. 3383, 3394-95 & n.4, 77 L.Ed.2d 1090 (1983)). For procedural rulings, a COA will issue only if

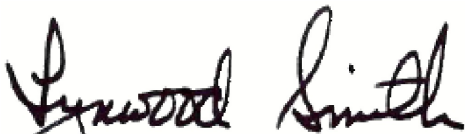
¹ The *Rules Governing § 2254 Cases* are applicable to cases filed pursuant to 28 U.S.C. § 2241. *See* Rule 1(b) of the *Rules Governing § 2254 Cases*. However, the court recognizes that petitioner, as a federal prisoner, is not required to obtain a certificate of appealability in order to appeal the denial of his habeas corpus petition. *See Sawyer v. Holder*, 326 F.3d 1363, 1364 n.3 (11th Cir. 2003).

reasonable jurists could debate whether the petition states a valid claim of the denial of a constitutional right and whether the court's procedural ruling was correct. *Id.*

The Court finds that reasonable jurists could not debate its resolution of the claims presented in this habeas corpus petition. For the reasons stated in the magistrate judge's report and recommendation, the Court DECLINES to issue a COA with respect to any claims.

A separate order in conformity with this Memorandum Opinion will be entered contemporaneously herewith.

DONE this 7th day of January, 2016.



United States District Judge