

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION**

<b>TABITHA BURKS GRAY,</b>	}	
	}	
<b>Petitioner,</b>	}	
	}	
<b>v.</b>	}	<b>Case No.: 7:17-cv-00175-RDP-SGC</b>
	}	
<b>UNITED STATES OF AMERICA,</b>	}	
	}	
<b>Respondent.</b>	}	

**MEMORANDUM OPINION**

On October 18, 2017, 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 November 3, 2017, Petitioner filed untimely objections to the Magistrate Judge’s Report and Recommendation. Despite Petitioner’s untimely filing, the court has considered her objections but finds them meritless.

After careful consideration of the record in this case and the Magistrate Judge’s Report and Recommendation, the court hereby **ADOPTS** the Report of the Magistrate Judge. The court further **ACCEPTS** the recommendations of the Magistrate Judge that this matter be (1) recharacterized as a motion to vacate, set aside, or correct under 28 U.S.C. § 2255 and (2) dismissed for lack of subject matter jurisdiction.

Additionally, the court **ACCEPTS** the recommendation of the Magistrate Judge that a certificate of appealability (“COA”) be denied. Pursuant to Rule 11 of the *Rules Governing § 2254 Cases*, the court has evaluated the claims within the petition for suitability for the issuance of a 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 (2000). The court finds that reasonable jurists could not debate its resolution of the claims presented in this habeas corpus petition. As such, the court **DECLINES** to issue a COA with respect to any claims.

A separate order in accordance with the Memorandum Opinion will be entered.

**DONE** and **ORDERED** this November 6, 2017.

  
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**R. DAVID PROCTOR**  
UNITED STATES DISTRICT JUDGE