

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Stephen Oliver Swartz,)	No. CV 12-23-TUC-FRZ (BPV)
Petitioner,)	ORDER
vs.)	
Charles L. Ryan, et al.,)	
Respondents.)	

Pending before the Court is a Report and Recommendation issued by United States Magistrate Judge Velasco that recommends denying Petitioner’s habeas petition filed pursuant to 28 U.S.C. §2254.¹ As Petitioner’s objections do not undermine the analysis and proper conclusion reached by Magistrate Judge Velasco, Petitioner’s objections are rejected and the Report and Recommendation is adopted.

Before Petitioner can appeal this Court's judgment, a certificate of appealability must issue. See 28 U.S.C. §2253(c) and Fed. R. App. P. 22(b)(1). Federal Rule of Appellate Procedure 22(b) requires the district court that rendered a judgment denying the petition made pursuant to 28 U.S.C. §2254 to "either issue a certificate of appealability or state why

¹The Court reviews de novo the objected-to portions of the Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Court reviews for clear error the unobjected-to portions of the Report and Recommendation. *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); see also *Conley v. Crabtree*, 14 F. Supp. 2d 1203, 1204 (D. Or. 1998).

1 a certificate should not issue." Additionally, 28 U.S.C. §2253(c)(2) provides that a certificate
2 may issue "only if the applicant has made a substantial showing of the denial of a
3 constitutional right." In the certificate, the court must indicate which specific issues satisfy
4 this showing. See 28 U.S.C. §2253(c)(3). A substantial showing is made when the
5 resolution of an issue of appeal is debatable among reasonable jurists, if courts could resolve
6 the issues differently, or if the issue deserves further proceedings. See *Slack v. McDaniel*,
7 529 U.S. 473, 484-85 (2000). Upon review of the record in light of the standards for
8 granting a certificate of appealability, the Court concludes that a certificate shall not issue
9 as the resolution of the petition is not debatable among reasonable jurists and does not
10 deserve further proceedings.

11 Accordingly, IT IS HEREBY ORDERED as follows:

- 12 (1) The Report and Recommendation (Doc. 23) is accepted and adopted.
- 13 (2) Petitioner's §2254 habeas petition is denied and this case is dismissed with prejudice.
- 14 (3) A Certificate of Appealability is denied and shall not issue.
- 15 (4) The Clerk of the Court shall enter judgment accordingly and close the file in this matter.

16
17 DATED this 16th day of May, 2014.

18
19 
20 **Frank R. Zapata**
21 **Senior United States District Judge**