

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**KEVIN PAYTON,
ADC#082480**

PETITIONER

v.

5:12-cv-00032-KGB-JJV

**RAY HOBBS, Director,
Arkansas Department of Correction**

RESPONDENT

ORDER

The Court has reviewed the Proposed Findings and Recommendations submitted by United States Magistrate Judge Joe J. Volpe and petitioner Kevin Payton's objections. After carefully considering the objections and making a *de novo* review of the record, the Court concludes that the Proposed Findings and Recommendations should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects.

This Court concludes that no certificate of appealability will issue. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). As to the claims that are procedurally barred, Mr. Payton has not demonstrated that jurists of reason would find it debatable whether his petition states a valid claim for the denial of a constitutional right and whether this Court was correct in its procedural ruling. *Id.* As to any claims that are not procedurally barred, this Court concludes Mr. Payton has not made a substantial showing of the denial of a constitutional right. *Id.*

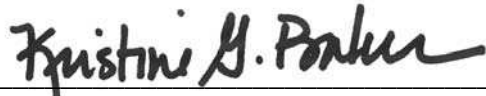
The Court acknowledges that Mr. Payton has filed a motion for an evidentiary hearing (Dkt. No. 19). After careful review, the Court denies that motion. In his motion, Mr. Payton states that he wishes to present new evidence, but the materials he includes to support this request are letters of support from friends and family from 2008, a medical report regarding the victim of the underlying offense, and portions of the trial transcript. These materials all appear to have been

associated with the trial of the underlying offense. The medical report was presented as evidence at Mr. Payton's trial (*See* Dkt. No. 19, at 45). Neither that report nor the letters of support aid Mr. Payton's procedurally defaulted claims or his claims regarding ineffective assistance of counsel. Judge Volpe's Proposed Findings and Recommendations properly addresses the claims in the petition for *habeas corpus*, and the materials submitted in the motion for an evidentiary hearing do not persuade the Court to order an evidentiary hearing or otherwise modify Judge Volpe's Proposed Findings and Recommendations. The motion for an evidentiary hearing is denied (Dkt. No. 19).

IT IS, THEREFORE, ORDERED that:

1. Mr. Payton's § 2254 Petition for Writ of Habeas Corpus is dismissed without prejudice (Dkt. No. 1).
2. A certificate of appealability will not be issued.
3. Mr. Payton's motion for an evidentiary hearing is denied (Dkt. No. 19).

SO ORDERED this 30th day of May, 2013.



KRISTINE G. BAKER
UNITED STATES DISTRICT JUDGE