

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

**MICHAEL MULDROW
ADC #155507**

PETITIONER

v.

CASE NO. 5:14CV00298 BSM

**WENDY KELLEY, Director,
Arkansas Department of Correction**

RESPONDENT

ORDER

The recommended disposition submitted by United States Magistrate Judge Jerome T. Kearney has been reviewed. There were no objections. After careful consideration, the recommended disposition is hereby adopted in all respects, with the following addition regarding Muldrow's procedurally defaulted claims.

Muldrow's claims are procedurally defaulted because he is unable to show cause and prejudice for the default, or actual innocence. *Welch v. Lund*, 616 F.3d 756, 760 (8th Cir. 2010). Muldrow is unable to show cause and prejudice "because his claim of actual innocence was available at the time of his guilty plea." *Dejan v. United States*, 208 F.3d 682, 685, (8th Cir. 2000). As for actual innocence, Muldrow must bring forth "new reliable evidence not available at trial" and "must establish 'that it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt.'" *Amrine v. Bowersox*, 238 F.3d 1023, 1029 (8th Cir. 2001) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). Not only has Muldrow failed to present any new and reliable evidence, but he also argues legal insufficiencies surrounding his plea, which does not satisfy the actual innocence standard. *Bousley v. United States*, 523 U.S. 614, 623 (1998) ("It is important to note in this

regard that ‘actual innocence’ means factual innocence, not mere legal insufficiency.”). Muldrow is unable to show that no reasonable juror would have found him guilty beyond a reasonable doubt of first degree murder. Accordingly, Muldrow’s claims remain procedurally defaulted.

A certificate of appealability will not issue because Muldrow has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(1)-(2). Because a certificate of appealability will not issue, it is certified that an in forma pauperis appeal would not be taken in good faith. Fed. R. App. P. 24(a)(3)(A).

IT IS SO ORDERED this 31st day of March 2016.


UNITED STATES DISTRICT JUDGE