

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

R. CASPER ADAMSON,  
Petitioner,

vs.

Case No.: 3:08cv202/RV/EMT

WALTER A. McNEIL,  
Respondent.

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**ORDER**

This cause comes on for consideration upon the magistrate judge's Report and Recommendation dated January 8, 2010 (Doc. 42). The parties have been furnished a copy of the Report and Recommendation and have been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). I have made a de novo determination of all timely filed objections. Having considered the Report and Recommendation, and any timely filed objections thereto timely filed, I have determined that the Report and Recommendation should be adopted.

As amended effective December 1, 2009, § 2254 Rule 11(a) provides that "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant," and if a certificate is issued "the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2)." A timely notice of appeal must still be filed, even if the court issues a certificate of appealability. Rules Governing Section 2254 Cases 11(b).

I find no substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 483–84, 120 S. Ct. 1595, 1603–04, 146 L. Ed. 2d 542 (2000) (explaining how to satisfy this showing) (citation omitted). Therefore, a certificate of appealability shall be denied.

Accordingly, it is now **ORDERED** as follows:

1. The magistrate judge's Report and Recommendation is adopted and incorporated by reference in this order.
2. This case is **DISMISSED** without prejudice for Petitioner's failure to exhaust state remedies pursuant to 28 U.S.C. § 2254(b).
3. A certificate of appealability is **DENIED**.

**DONE AND ORDERED** this 16th day of February, 2010.

*/s/ Roger Vinson* \_\_\_\_\_

**ROGER VINSON**  
**SENIOR UNITED STATES DISTRICT JUDGE**