

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

TIMOTHY E. NOLES,
Petitioner,

v.

Case No.: 3:13cv130/MCR/EMT

MICHAEL D. CREWS,
Respondent.

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ORDER

This cause comes on for consideration upon the Magistrate Judge's Report and Recommendation dated October 16, 2013. (Doc. 17). 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). The Court has made a de novo determination of any timely filed objections (doc. 21).¹ Having considered the Report and Recommendation and timely filed objections, the Court concludes that the Report and Recommendation should be adopted.

Additionally, having reviewed the Motion to Issue Certificate of Appealability (doc. 22), the Court finds that it is due to 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. Respondent's motion to dismiss (doc. 13) is **GRANTED**.
3. This habeas action is **DISMISSED without prejudice for lack of jurisdiction**.

¹ In particular, the Court has considered Petitioner's arguments regarding the retroactivity of the holding in *Martinez v. Ryan*, 132 S. Ct. 1309 (2012), which Petitioner asserts the Magistrate Judge failed to address. The Court finds that *Martinez* offers him no avenue of relief. See *Jones v. Ryan*, 733 F.3d 825, 843 (9th Cir. 2013) (concluding *Martinez* does not apply retroactively), *cert. denied*, 134 S. Ct. 503 (2013); see also *Crutsinger v. Stephens*, No. 12-70014, 2013 WL 5227078, at *6 (5th Cir. 2013) (unpublished) (same).

4. Petitioner's Motion to Issue Certificate of Appealability (doc. 22) is **DENIED**.
DONE AND ORDERED this 6th day of December, 2013.

M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE