

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

DARRYL D. RUTH,

Petitioner,

v.

CASE NO. 4:18cv92-RH-CAS

MARK S. INCH, Secretary,  
Florida Department of Corrections,

Respondent.

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**ORDER SUBSTITUTING RESPONDENTS,  
DENYING THE PETITION, AND DENYING  
A CERTIFICATE OF APPEALABILITY**

This petition for a writ of habeas corpus under 28 U.S.C. § 2254 is before the court on the magistrate judge's report and recommendation, ECF No. 20, and the objections, ECF No. 21. I have reviewed de novo the issues raised by the objections.

This order denies the petition for the reasons set out in the report and recommendation. The order also substitutes the respondent Mark S. Inch, the current Secretary of the Florida Department of Corrections, for his predecessor. *See* Fed. R. Civ. P. 25(d).

Rule 11 of the Rules Governing § 2254 Cases requires a district court to “issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” Under 28 U.S.C. § 2253(c)(2), a certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” *See Miller-El v. Cockrell*, 537 U.S. 322, 335-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983); *see also Williams v. Taylor*, 529 U.S. 362, 402-13 (2000) (setting out the standards applicable to a § 2254 petition on the merits). As the Court said in *Slack*:

To obtain a COA under § 2253(c), a habeas prisoner must make a substantial showing of the denial of a constitutional right, a demonstration that, under *Barefoot*, includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were “ ‘adequate to deserve encouragement to proceed further.’ ”

529 U.S. at 483-84 (quoting *Barefoot*, 463 U.S. at 893 n.4). Further, to obtain a certificate of appealability when dismissal is based on procedural grounds, a petitioner must show, “at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* at 484.

The petitioner has not made the required showing. This order thus denies a certificate of appealability.

For these reasons,

IT IS ORDERED:

1. Mark S. Inch is substituted as the respondent Secretary of the Florida Department of Corrections. The case style is amended accordingly.
2. The report and recommendation is accepted.
3. The clerk must enter judgment stating, “The petition is denied with prejudice.”
4. A certificate of appealability is denied.
5. The clerk must close the file.

SO ORDERED on February 28, 2019.

s/Robert L. Hinkle  
United States District Judge