

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

MICKEY DOUGLAS,)
Petitioner,)
v.) CIVIL ACTION NO. 5:17-CV-103 (MTT)
CEDRIC TAYLOR,)
Respondent.)

)

ORDER

United States Magistrate Judge Stephen Hyles recommends that Petitioner Mickey Douglas's 28 U.S.C. § 2254 petition be denied as procedurally defaulted. Doc. 9 at 1, 6. Additionally, the Magistrate Judge recommends denying a certificate of appealability (COA). *Id.* at 6. Douglas has not objected to the Recommendation. The Court has reviewed the Recommendation and adopts, as amended herein, the findings, conclusions, and recommendations of the Magistrate Judge.

The Court agrees with the Magistrate Judge's finding that the lone claim in Douglas's § 2254 petition is procedurally defaulted. *Id.* at 1, 6. The Court also notes that Douglas has failed to establish "cause for the failure to properly present the claim [in state court] and actual prejudice, or that the failure to consider the claim would result in a fundamental miscarriage of justice." *Conner v. Hall*, 645 F.3d 1277, 1287 (11th Cir. 2011) (citing *Wainwright v. Sykes*, 433 U.S. 72, 81-88 (1977) and *Marek v. Singletary*, 62 F.3d 1295, 1301-02 (11th Cir. 1995)).

Further, the Court agrees with the Magistrate Judge's recommendation that a COA be denied. As stated in the Recommendation, a "[COA] may be issued only if the

applicant makes ‘a substantial showing of the denial of a constitutional right.’” Doc. 9 at 6 (quoting 28 U.S.C. § 2253(c)(2)). To warrant a COA, a petitioner must make a preliminary showing that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see also *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (“[A] petitioner must sho[w] 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.” (internal quotation marks and citations omitted)). Because Douglas’s petition is denied as procedurally defaulted, the Court finds it necessary to note that, when a claim is denied on procedural grounds, a petitioner must also “demonstrate that a procedural ruling barring relief is itself debatable among jurists of reason; otherwise, the appeal would not ‘deserve encouragement to proceed further.’” *Buck v. Davis*, 137 S. Ct. 759, 777 (2017) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (“[A] COA should issue when the [petitioner] shows, 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.”)). Douglas has not made such a showing and thus the Court agrees that a COA should be denied.

Accordingly, the Recommendation is **ADOPTED as amended** and made the order of this Court. Douglas’s § 2254 petition is **DENIED**, and a certificate of appealability is **DENIED**. Additionally, because there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. See 28 U.S.C. §

1915(a)(3). Accordingly, any motion to proceed in forma pauperis on appeal is
DENIED.

SO ORDERED, this 18th day of October, 2017.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT