

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

RODRIQUEZ ANTRON MCDANIEL,)
)
 Petitioner,)
)
 v.) CV 111-100
)
 STANLEY WILLIAMS, Warden,)
)
 Respondent.)

ORDER

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge’s Report and Recommendation, to which objections have been filed (doc. no. 18). Accordingly, the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of the Court. Therefore, Respondent’s motion to dismiss is **GRANTED** (doc. no. 10),¹ and Petitioner’s motion to dismiss Respondent’s motion to dismiss is **DENIED** (doc. no. 13).

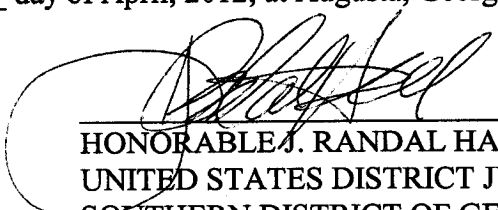
Furthermore, a prisoner seeking relief under 28 U.S.C. § 2254 must obtain a certificate of appealability (“COA”) before appealing the denial of his application for a writ of habeas corpus. This Court “must issue or deny a certificate of appealability when it enters

¹Due to an apparent scrivener’s error, the Report and Recommendation incorrectly refers to Respondent’s motion to dismiss as Petitioner’s motion to dismiss. However, in light of the accompanying document number reference and the analysis, it is apparent that the Magistrate Judge recommended that Respondent’s motion to dismiss be granted. (See doc. no. 16, pp. 3-6, 10.)

a final order adverse to the applicant.” Rule 11(a) to the Rules Governing Section 2254 Proceedings. This Court should grant a COA only if the prisoner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). For the reasons set forth in the Report and Recommendation, and in consideration of the standards enunciated in Slack v. McDaniel, 529 U.S. 473, 482-84 (2000), Petitioner has failed to make the requisite showing. Accordingly, a COA is **DENIED** in this case.² Moreover, because there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. Accordingly, Petitioner is not entitled to appeal *in forma pauperis*. See 28 U.S.C. § 1915(a)(3).

Upon the foregoing, the instant § 2254 petition is **DISMISSED**, and a final judgment shall be **ENTERED** in favor of Respondent.

SO ORDERED this 13th day of April, 2012, at Augusta, Georgia.



HONORABLE J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA

²“If the court denies a certificate, [a party] may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.” Rule 11(a) to the Rules Governing Section 2254 Proceedings.