

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.
2017 JAN -4 AM 9:39
CLERK *M. Akins*
SO. DIST. OF GA.

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

DUBLIN DIVISION

DEMARCUS A. GRESHAM,)

Petitioner,)

v.)

CV 316-084

STATE OF GEORGIA,)

Respondent.)

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ORDER
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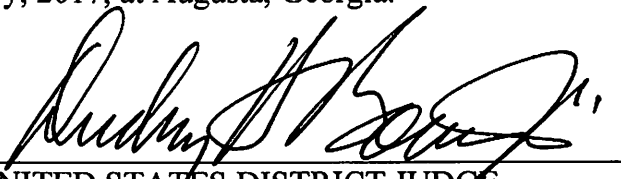
After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge’s Report and Recommendation, to which objections have been filed. (Doc. nos. 12, 13.) Accordingly, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion, **DENIES AS MOOT** Petitioner’s extraordinary motion for new trial (doc. no. 8), and **DISMISSES** as successive the instant petition brought pursuant to 28 U.S.C. § 2254.

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 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, the Court **DENIES** a COA in this case.¹ 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 Court **CLOSES** this civil action and **DIRECTS** the Clerk to enter final judgment in favor of Respondent.

SO ORDERED this 4th day of January, 2017, at Augusta, Georgia.


UNITED STATES DISTRICT JUDGE

¹ “If the court denies a certificate, the parties 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.