

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at LEXINGTON

RICHARD ALLEN BAKER,)	
)	
Petitioner,)	Civil Case No.
)	5:14-cv-358-JMH-CJS
v.)	
)	
DAN BOTTOM, WARDEN,)	MEMORANDUM OPINION & ORDER
)	
Respondent.)	
)	

This matter is before the Court upon the Report and Recommendation of United States Magistrate Judge Candace J. Smith [DE 26], wherein she recommends that the Court deny Petitioner Richard Allen Baker's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. 2254 and decline to issue a certificate of appealability. In that Report, filed on February 14, 2017, Judge Smith advised Petitioner that Objections thereto were due within fourteen days, or further appeal would be waived. *Id.* That time has now expired, and Petitioner has filed no Objections. *Id.*

Generally, "a judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations made by the magistrate judge." 28 U.S.C. § 636. However, when the petitioner fails to file any objections to the Report and Recommendation, as in the case *sub judice*, "[i]t does not appear that Congress intended to require

district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard." *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Consequently, and in the absence of any objections from Petitioner, this Court adopts the well-articulated and detailed reasoning set forth in the Report and Recommendation as its own.

Finally, the Magistrate Judge recommends that no certificate of appealability should issue in this matter. "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order for a certificate to issue, Defendant must be able to show that reasonable jurists could find in his favor, and the "question is the debatability of the underlying federal constitutional claim, not the resolution of that debate." *Miller-El v. Cockrell*, 537 U.S. 322, 342 (2003). Again, in the absence of objections from Petitioner, the undersigned adopts the Report and Recommendation on this issue, and concludes that no certificate should issue as Petitioner cannot make a substantial showing of the denial of a constitutional right.

Accordingly, **IT IS ORDERED** as follows:

(1) The Report and Recommendation [DE 26] of United States Magistrate Judge Candace J. Smith is hereby **ADOPTED IN FULL** as the findings of fact and conclusions of law of the Court;

(2) Petitioner Richard Allen Baker's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. 2254 [DE 1] is hereby **DENIED**; and

(3) A separate Judgment shall issue contemporaneously with this Memorandum Opinion and Order.

This the 1st day of May, 2017.



Signed By:

Joseph M. Hood *JMH*

Senior U.S. District Judge