

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

ERIC BRISTER

CIVIL ACTION

VERSUS

NO: 10-2941

BURL CAIN, WARDEN

SECTION: R(6)

ORDER AND REASONS

Before the Court are Eric Brister's petition for a writ of habeas corpus<sup>1</sup> and his objection<sup>2</sup> to the Magistrate Judge's Report and Recommendation that the petition be denied with prejudice.<sup>3</sup> The Court, having reviewed *de novo* the petition, the record, the applicable law, the Magistrate Judge's Report and Recommendation, and the petitioner's objections thereto, hereby approves the Magistrate Judge's Report and Recommendation and adopts it as its opinion.

Furthermore, Rule 11 of the Rules Governing Section 2254 Proceedings provides that "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue." RULES GOVERNING SECTION 2254

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<sup>1</sup> R. Doc. 1.

<sup>2</sup> R. Doc. 12.

<sup>3</sup> R. Doc. 11.

PROCEEDINGS, RULE 11(a). A court may issue a certificate of appealability only if the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); RULES GOVERNING SECTION 2254 PROCEEDINGS, RULE 11(a)(noting that § 2253(c)(2) supplies the controlling standard). In *Miller-El v. Cockrell*, 537 U.S. 322 (2003), the Supreme Court held that the "controlling standard" for a certificate of appealability requires the petitioner to show "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 [are] 'adequate to deserve encouragement to proceed further.'" *Id.* at 336.

Here, Brister has not made a substantial showing of the denial of a constitutional right. Further, the issues would not engender debate among reasonable jurists.

Accordingly, Eric Brister's petition for a writ of habeas corpus is DISMISSED WITH PREJUDICE. The Court will not issue a certificate of appealability.

New Orleans, Louisiana, this 25th day of July, 2011.

  
SARAH S. VANCE

UNITED STATES DISTRICT JUDGE