

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CARL PAYNE

CIVIL ACTION

VERSUS

NO: 12-2602

STEVE C. RADER, WARDEN

SECTION: R

ORDER AND REASONS

Before the Court is Carl Payne's petition for federal *habeas corpus* relief under Title 28, United States Code, Section 2254. The Magistrate Judge has recommended that Payne's petition be dismissed with prejudice.¹ The Court, having reviewed *de novo* the petition, the record, the applicable law, the Magistrate's Report and Recommendation ("R&R"), and the petitioner's objections thereto, hereby approves the R&R and adopts it as its opinion.

Even construing his *pro se* objection broadly, petitioner does not raise any new arguments in his objection to the R&R. With the exception of a single paragraph asserting that the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution protect his rights to a fair trial and to equal protection, Petitioner merely reasserts verbatim the arguments contained in his original habeas petition. Accordingly, Payne's petition is dismissed with prejudice.

Rule 11 of the Rules Governing Section 2254 Proceedings provides that "[t]he district court must issue or deny a

¹ R. Doc. 11.

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."² A court may only issue a certificate of appealability if the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). 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.'" *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

Petitioner's application does not satisfy this standard. For the reasons articulated by the magistrate judge, each of the claims contained in the petition is without merit, and the issues would not engender debate among reasonable jurists.

For the foregoing reasons, the Court DENIES Payne's petition for federal habeas corpus relief and DENIES the issuance of a certificate of appealability.

New Orleans, Louisiana, this 20th day of November, 2013.



SARAH S. VANCE
UNITED STATES DISTRICT JUDGE

² Rules Governing Section 2254 Proceedings, Rule 11(a).