

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SAMUEL KELLY

CIVIL ACTION

VERSUS

NO. 14-2282

LOUISIANA STATE ET AL.

SECTION "R" (4)

ORDER

The Court has reviewed *de novo* the original petition for *habeas corpus*,¹ petitioner's supplemental briefing,² the record, the applicable law, and the Magistrate Judge's unopposed Report and Recommendation.³ The Magistrate Judge correctly determined that the petition is time-barred under the Antiterrorism and Effective Death Penalty Act. She also correctly determined that the Dunbar affidavit does not change the start date of the limitations period under 28 U.S.C. § 2244(d)(1)(D) because petitioner could have discovered the information contained in the affidavit several years before its execution. Accordingly, the Court adopts the Magistrate Judge's Report and Recommendation as its opinion herein.

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

¹ R. Doc. 3.

² R. Doc. 26; R. Doc. 29.

³ R. Doc. 30.

direct the parties to submit arguments on whether a certificate should issue.” Rules Governing Section 2254 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). 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).

For the reasons stated by the Magistrate Judge, the petitioner has not made a substantial showing of the denial of a constitutional right.

Accordingly, IT IS ORDERED that the petition for *habeas corpus* is DISMISSED WITH PREJUDICE. The Court will not issue a certificate of appealability.

New Orleans, Louisiana, this 9th day of November, 2018.


SARAH S. VANCE
UNITED STATES DISTRICT JUDGE