

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MARIO FUNES

CIVIL ACTION

VERSUS

NO: 15-2108

BURL CAIN, WARDEN

SECTION: R

ORDER

Plaintiff Mario Funes filed this *pro se* petition for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2254. The Court, having reviewed *de novo* the petition,¹ the defendant's response,² the record, the applicable law, and the Magistrate Judge's unopposed Report and Recommendation,³ hereby approves the Report and Recommendation and adopts it as its opinion. For the reasons stated in the Report and Recommendation, Funes's petition must be dismissed.

Rule 11(a) 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." A court may only issue a certificate of appealability if the petitioner makes "a substantial showing of the

¹ R. Doc. 1.

² R. Doc. 6.

³ R. Doc. 9.

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) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

The Court concludes that Funes's petition fails to satisfy this standard. Accordingly, the Court will not issue a certificate of appealability.

For the foregoing reasons, the Court DISMISSES WITH PREJUDICE Funes's petition for *habeas corpus* and DENIES a certificate of appealability.

New Orleans, Louisiana, this 23rd day of November, 2015.



SARAH S. VANCE
UNITED STATES DISTRICT JUDGE