

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JOHN T. FINCH, SR.

CIVIL ACTION

VERSUS

NO. 16-8724

JASON KENT, WARDEN

SECTION "R" (5)

ORDER

Petitioner John T. Finch, Sr. filed this petition for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2254. The Court has reviewed *de novo* the petition,¹ the record, the applicable law, and the Magistrate Judge's Report and Recommendation.² The Magistrate Judge's recommended ruling is correct and petitioner has not objected to the Report and Recommendation. Accordingly, the Court adopts the Magistrate Judge's Report and Recommendation as its opinion herein.

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


¹ R. Doc. 4.

² R. Doc. 12.

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. Petitioner has failed to meet these standards.

IT IS ORDERED that Fitch’s petition for *habeas corpus* is DISMISSED WITH PREJUDICE.

New Orleans, Louisiana, this 21st day of July, 2017.


SARAH S. VANCE
UNITED STATES DISTRICT JUDGE