

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DONALD LOSTON

CIVIL ACTION

VERSUS

NO. 17-4842

BURL CAIN

SECTION "R" (3)

ORDER

The Court has reviewed *de novo* the petition for habeas corpus,¹ the record, the applicable law, the Magistrate Judge's Report and Recommendation,² and the petitioner's objections.³ The Magistrate Judge correctly determined that petitioner's claims are meritless. Petitioner's objections simply rehash arguments made before the Magistrate Judge and are without merit. 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 direct the parties to submit arguments on whether a certificate

¹ R. Doc. 3.
² R. Doc. 10.
³ R. Doc. 12.

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 in the Report and Recommendation, petitioner has not made a substantial showing of the denial of a constitutional right. Accordingly, IT IS ORDERED that the petition is DISMISSED WITH PREJUDICE. The Court will not issue a certificate of appealability.

New Orleans, Louisiana, this __1st__ day of August, 2018.



SARAH S. VANCE
UNITED STATES DISTRICT JUDGE