

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RANELL JOSEPH

CIVIL ACTION

VERSUS

NO. 18-183

S.W. "SANDY" McCAIN, WARDEN

SECTION "R" (2)

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 petitioner's objections.³ The Magistrate Judge correctly determined that the petition should be dismissed without prejudice because petitioner has failed to exhaust in state court any of the claims in his federal court petition.⁴ Petitioner's objections are meritless, and are adequately addressed in the Report and Recommendation.⁵ 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

¹ R. Doc. 4.

² R. Doc. 12.

³ R. Doc. 13.

⁴ R. Doc. 12 at 7.

⁵ R. Doc. 13.

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 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).

Petitioner has failed to meet this standard. Accordingly, IT IS ORDERED that the petition for *habeas corpus* is DISMISSED WITHOUT PREJUDICE. The court will not issue a certificate of appealability.

New Orleans, Louisiana, this 3rd day of January, 2019.



SARAH S. VANCE
UNITED STATES DISTRICT JUDGE