

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RUDOLPH JOSEPH
VERSUS
MARLIN GUSMAN, ET AL.

CIVIL ACTION
NO. 20-50-WBV-KWR
SECTION “D”(4)

ORDER

Before the Court is petitioner, Rudolph Joseph’s, Appeal to Magistrate’s Denial of Counsel and Traversal to Magistrate’s Recommendation to Dismiss Habeas Corpus Petition.¹ The Court, having considered the Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241,² the record, the applicable law, the Report and Recommendation of the Chief United States Magistrate Judge,³ and Petitioner’s Objections to the Report and Recommendation,⁴ hereby approves the Report and Recommendation of the Chief United States Magistrate Judge and adopts it as its opinion in this matter.⁵

Additionally, Rule 11(a) of the Rules Governing 28 U.S.C. § 2254 proceedings provides that, “The 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 denial

¹ R. Doc. 18.

² R. Doc. 1.

³ R. Doc. 17.

⁴ R. Doc. 18.

⁵ The Court recognizes that the Magistrate Judge referred to Petitioner as Mr. Johnson instead of Mr. Joseph several times in the Report and Recommendation. This Court is satisfied after a review of the record that this reference to an incorrect name is simply a mistake and that the entire matter relates only to Petitioner Rudolph Joseph.

of a constitutional right.”⁶ 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.”⁷ The Court finds that Rudolph Joseph’s Petition fails to satisfy this standard. Accordingly, the Court will not issue a certificate of appealability.

Accordingly,

IT IS HEREBY ORDERED that Rudolph Joseph’s Appeal to Magistrate’s Denial of Counsel and Traversal to Magistrate’s Recommendation to Dismiss Habeas Corpus Petition⁸ is **DENIED**.

IT IS FURTHER ORDERED that Rudolph Joseph’s Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241⁹ is **DISMISSED WITH PREJUDICE** to the extent that Petitioner seeks dismissal of his state court charges based upon speedy trial violations, as such relief is unavailable under § 2241. To the extent Petitioner seeks appropriate relief under § 2241 (a speedy trial), the Petition is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust state court review of the alleged speedy trial violations.

IT IS FURTHER ORDERED that the Court **DENIES** a certificate of appealability.

⁶ 28 U.S.C. § 2253(c)(2).

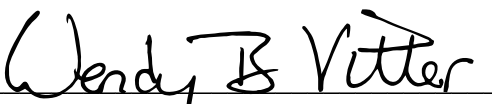
⁷ *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

⁸ R. Doc. 18.

⁹ R. Doc. 1.

IT IS FURTHER ORDERED that Petitioner's appeal of the Chief Magistrate Judge's Order and Reasons denying Petitioner's Motion for Appointment of Counsel¹⁰ is **DENIED**.

New Orleans, Louisiana, September 9, 2020.



WENDY B. VITTER
United States District Judge

¹⁰ R. Doc. 16.