

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TIMOTHY J. MAZIQUE

CIVIL ACTION

VERSUS

NO. 20-2695

WARDEN ALVIN ROBINSON

SECTION "R" (3)

ORDER AND REASONS

Before the Court is Timothy J. Mazique's 28 U.S.C. § 2254 petition for a writ of *habeas corpus*.¹ This matter was referred to Magistrate Judge Dana Douglas under Eastern District of Louisiana Local Civil Rule 73.2(A) and 28 U.S.C. § 636(b) for a Report and Recommendation (R&R). Magistrate Judge Douglas concluded in that Mazique was not in custody at the time he filed his habeas petition and that the Court does not have subject matter jurisdiction over his petition as a consequence.²

Plaintiff did not object to the R&R. Therefore, this Court reviews the R&R for clear error. *See* Fed. R. Civ. P. 72(b) advisory committee's note (1983) ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."). The Court finds no clear error in the Magistrate Judge's

¹ R. Doc. 5.

² R. Doc. 16 at 1.

analysis. Therefore, the Court adopts the Magistrate Judge’s R&R as its opinion.

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.” Rules Governing Section 2254 Proceedings, Rule 11(a). The 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 Court does not issue a certificate of appealability. *See Williams v. Chatman*, 510 F.3d 1290, 1294-95 (11th Cir. 2007) (“Where a district court lacks subject matter jurisdiction over a Rule 60(b) motion, . . . it also lacks jurisdiction to grant a COA.”).

For the reasons stated in the Report and Recommendation, IT IS ORDERED that the petition is DISMISSED WITHOUT PREJUDICE. The Court will not issue a certificate of appealability.

New Orleans, Louisiana, this 5th day of May, 2021.


SARAH S. VANCE
UNITED STATES DISTRICT JUDGE