

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VIRGIL NAPIER #805595,

Petitioner,

Case No. 1:13-cv-660

v.

HON. JANET T. NEFF

LLOYD RAPELJE,

Respondent.

_____ /

ORDER

This is a habeas corpus petition filed pursuant to 28 U.S.C. § 2254. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R) recommending that this Court deny the petition. The matter is presently before the Court on Petitioner’s objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. Petitioner’s two objections merely reassert the claims raised in his habeas petition and state no basis for rejecting the Magistrate Judge’s well-reasoned Report and Recommendation, which fully considered Petitioner’s claims in the first instance. The Court therefore denies the objections and will enter a Judgment in this § 2254 proceeding in accordance with the Report and Recommendation. *See Gillis v. United States*, 729 F.3d 641, 643 (6th Cir. 2013) (requiring a separate judgment in habeas proceedings).

The Magistrate Judge also recommended that a certificate of appealability (COA) be denied. *See RULES GOVERNING § 2254 CASES*, Rule 11 (requiring the district court to “issue or deny a

certificate of appealability when it enters a final order”). The Court must review the issues individually. *Slack v. McDaniel*, 529 U.S. 473 (2000); *Murphy v. Ohio*, 263 F.3d 466, 466-67 (6th Cir. 2001).

“When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484. “Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further.” *Id.* To the extent Petitioner’s claims were rejected on procedural grounds, this Court finds that reasonable jurists would not find the Court’s procedural ruling debatable.

“Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack*, 529 U.S. at 484. Upon review, this Court finds that reasonable jurists would not find the Court’s assessment of Petitioner’s sufficiency of the evidence and evidentiary claims debatable or wrong. A certificate of appealability will therefore be denied.

Accordingly:

IT IS HEREBY ORDERED that the Objections (Dkt 21) are DENIED and the Report and Recommendation of the Magistrate Judge (Dkt 20) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the petition for habeas corpus relief (Dkt 1) is DENIED for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that a certificate of appealability pursuant to 28 U.S.C. §2253(c) is DENIED as to each issue asserted.

Dated: August 10, 2015

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge