

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOEL ALEXZANDER GOMEZ,

Petitioner,

v.

MARY BERGHUIS,

Respondent.

Case No. 1:14-cv-407

HON. JANET T. NEFF

OPINION AND 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. The Court denies the objections and issues this Opinion and Order. The Court will also issue a Judgment in this § 2254 proceeding. *See Gillis v. United States*, 729 F.3d 641, 643 (6th Cir. 2013) (requiring a separate judgment in habeas proceedings).

Petitioner presented four habeas corpus claims for review, and the Magistrate Judge found no issue on which to recommend granting habeas relief. In his objections, Petitioner “waives the right to appeal on Claim I (Hearsay Evidence); Claim II (Opinion Testimony); and Claim III (Fourth Amendment)” (Pet’r Obj., ECF No. 11 at PageID.1086). Petitioner’s objections are limited to Claim IV (Prosecutorial Misconduct) (*id.*).

The Magistrate Judge rejected Petitioner's prosecutorial misconduct claim, finding that the challenged comments and actions presented no issue upon which habeas relief could be granted (R&R, ECF No. 10 at PageID.1078-1084). Petitioner's objections merely reiterate the claims in his petition. His objections fail to pose any specific challenge to, let alone demonstrate any factual or legal error in, the Magistrate Judge's analysis or conclusion. *See Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir. 2004) (disfavoring the practice of incorporating prior arguments into objections to a magistrate judge's report).

Having determined Petitioner's objections lack merit, the Court must further determine pursuant to 28 U.S.C. § 2253(c) whether to grant a certificate of appealability as to the issues raised. *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).

"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 claims debatable or wrong. A certificate of appealability will therefore be denied as to each issue asserted.

Accordingly:

IT IS HEREBY ORDERED that the Objections (ECF No. 11) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 10) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the petition for habeas corpus relief (ECF No. 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 31, 2017

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