

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DANNY JOE CLAYTON,

Petitioner,

v.

Case No. 2:08-cv-252
HON. R. ALLAN EDGAR

GERALD HOFBAUER,

Respondent.

MEMORANDUM AND ORDER

Petitioner Danny Joe Clayton, a Michigan state prisoner in the custody of the Michigan Department of Corrections, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. On August 25, 2011, Magistrate Judge Timothy P. Greeley submitted his report and recommendation. [Court Doc. No. 27]. It is recommended that the habeas petition be denied and dismissed with prejudice, and that a certificate of appealability be denied under 28 U.S.C. § 2253(c)(2).

Petitioner Clayton has not timely filed any objections to the report and recommendation. After reviewing the record, the Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.3(b). The Court concludes that the habeas petition brought under 28 U.S.C. § 2254 is without merit. The habeas petition shall be **DENIED and DISMISSED WITH PREJUDICE**.

If petitioner Clayton files a notice of appeal, it will be treated as an application for a certificate of appealability which shall be **DENIED** pursuant to 28 U.S.C. § 2253(c)(2); Fed. R. App.

P. 22(b)(1); and *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), for the same reasons expressed in the report and recommendation. Petitioner Clayton has not made a substantial showing of the denial of a federal constitutional right. Reasonable jurists could not find that dismissal of the habeas petition is debatable or erroneous.

A separate judgment will enter.

SO ORDERED.

Dated: September 16, 2011.

/s/ R. Allan Edgar

R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE