

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

RICHARD DANIEL SULLIVAN

PETITIONER

v.

CAUSE NO. 1:17CV132-LG-JCG

STATE OF MISSISSIPPI, ET AL.

RESPONDENTS

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND GRANTING MOTION TO DISMISS**

This cause comes before the Court on the Report and Recommendation [18] of United States Magistrate Judge John C. Gargiulo, entered in this cause on January 10, 2018. The respondents in this habeas corpus action filed a motion to dismiss on the grounds that the petitioner had failed to exhaust his state court remedies; because he had pursued his claims pre-conviction, the state courts could not and did not consider them on the merits. Thus, the claims in this federal habeas petition had not been fairly presented to the state courts. The petitioner did not file an objection to Magistrate Judge Gargiulo's determination that dismissal of the habeas corpus petition for failure to exhaust was appropriate.¹ Therefore, the Court need only review the Report and Recommendation and determine whether it is either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

After having reviewed the Report and Recommendation, the record in this case, and the relevant law, the Court finds the Magistrate Judge's conclusions

¹ The Report and Recommendation was delivered via certified mail sometime prior to January 12, 2018. (Acknowledgment of Receipt, ECF No. 19).

neither clearly erroneous nor contrary to law. The Court will grant the respondents' Motion to Dismiss and dismiss the petitioner's habeas corpus petition without prejudice.

IT IS THEREFORE ORDERED AND ADJUDGED that the Report and Recommendation [18] of United States Magistrate Judge John C. Gargiulo entered in this cause on January 10, 2018, should be, and the same hereby is, adopted as the finding of this Court.

IT IS FURTHER ORDERED AND ADJUDGED that the respondents' Motion to Dismiss [13] is **GRANTED**. Plaintiff's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DISMISSED** without prejudice.

SO ORDERED AND ADJUDGED this the 7th day of February, 2018.

s/ Louis Guirola, Jr.
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE