

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JERMAINE C. ATKINS,)	
)	
Petitioner,)	
)	
v.)	Case No. 4:06CV1549 HEA
)	
STEVE LARKINS, ¹)	
)	
Respondent,)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on the Report and Recommendation of Magistrate Judge Frederick R. Buckles that the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, [Doc. No. 1], be dismissed. This Report and Recommendation was entered on January 12, 2010. Judge Buckles advised the parties that they had up to and including January 26, 2010 to file objections to the Report and Recommendation. Petitioner has not filed any objections to the Report and Recommendation.

After careful consideration, the Court will adopt and sustain the thorough analysis and reasoning of Judge Buckles as set forth in his January 12, 2010 Report

¹ Petitioner is currently incarcerated at the Eastern Reception, Diagnostic and Correctional Center (ERDCC) in Bonne Terre, Missouri. Inasmuch as Steve Larkins is the Warden of ERDCC, he is substituted for James Purkett as proper party respondent. Rule 2(a), Rules Governing Section 2254 Cases in the United States District Courts.

and Recommendation.

Certificate of Appealability

The federal statute governing certificates of appealability provides that “[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A substantial showing of the denial of a constitutional right requires that “issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings.” *Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997). Based on the record, and the law as discussed in Judge Mummert’s Report and Recommendation, the Court finds that Petitioner has not made a substantial showing of the denial of a constitutional right.

Accordingly,

IT IS HEREBY ORDERED that the Petition of Jermaine C. Atkins for Writ of Habeas Corpus, [Doc. No. 1], pursuant to 28 U.S.C. § 2254 is dismissed.

IT IS FURTHER ORDERED that a Certificate of Appealability will not issue in that, as Petitioner has not made a substantial showing of the denial of a federal constitutional right.

A separate judgment in accordance with this Memorandum and Order is

entered this same date.

Dated this 19th day of February, 2010.

A handwritten signature in cursive script, reading "Henry Edward Autrey", with a long horizontal flourish extending to the right.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE