

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

| | | |
|-----------------------|---|-----------|
| STEVEN DASHAWN SMITH, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | 1:13CV393 |
| |) | |
| KIERAN J. SHANAHAN, |) | |
| |) | |
| Respondent. |) | |

ORDER

On December 12, 2013, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. (Docs. 11 and 12.) On January 9, 2014, Petitioner filed objections to the Recommendation requesting the court "issue Petitioner a notice of appeal." (Doc. 13). Because a Recommendation has been entered, this court will construe the request to appeal as objections to the Recommendation. See Fed. R. Civ. P. 72(b)(2) ("Within 14 days after being served with a copy of the recommended disposition, a party may serve and file . . . objections."). This court will also construe the request as one requesting a certificate of appealability as to the issues noted by Petitioner.

The court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has

made a de novo determination which is in accord with the Magistrate Judge's report. The court therefore adopts the Magistrate Judge's recommendation.

IT IS THEREFORE ORDERED that Petitioner's motion for summary judgment in support of his habeas corpus petition (Doc. 8) is **DENIED**, that Respondent's motion for summary judgment (Doc. 5) is **GRANTED**, and that this action is **DISMISSED with prejudice**. A Judgment dismissing this action will be entered contemporaneously with this Order. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

This the 11th day of February, 2014.


United States District Judge