

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

ROBERT ANTWAIN STANBACK,)	
)	
Petitioner,)	
)	
v.)	1:16CV1301
)	
FAYE DANIELS,)	
)	
Respondent.)	

ORDER

The Order and Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on April 11, 2017, was served on the parties in this action. Doc. 12. The petitioner objected to the Recommendation. Doc. 14. He also filed a request for a certificate of appealability. Doc. 15.

The Court has 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. With one exception noted *infra*, the court adopts the Magistrate Judge’s recommendation.

To the extent the Magistrate Judge’s Recommendation can be read to hold as a matter of law that in every case the state satisfies its constitutional obligations to prisoners seeking post-conviction relief through NCPLS, the Court does not adopt that broad holding. The record is clear that in this case the petitioner had adequate access to legal materials and assistance, see Doc. 10 at 9 (referencing in his brief access to “law books” and “prison legal services”), and any broader holding is unnecessary.

The petitioner has asked for a certificate of appealability. Such certificates are only issued upon a finding that there is a substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, or a debatable procedural ruling. *See* 28 U.S.C. § 2253(c)(2). Here, the petitioner's conviction was over a decade old when he began the post-conviction process, and there is no substantial issue or debatable procedural ruling as to its timeliness. Therefore, the Court denies a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2).

IT IS THEREFORE ORDERED AND ADJUDGED that Respondent's motion to dismiss, Doc. 5, is **GRANTED**, the Petition, Doc. 1, is **DISMISSED**, and the request for a certificate of appealability, Doc. 15, is **DENIED**. 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 17th day of May, 2017.


UNITED STATES DISTRICT JUDGE