

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

PETER A. HUNTER,

Petitioner,

v.

Case No. 2:16-cv-506
JUDGE MICHAEL H. WATSON
Magistrate Judge King

WARDEN, ROSS
CORRECTIONAL INSTITUTION,

Respondent.

ORDER

On June 13, 2017, the Magistrate Judge recommended that Petitioner's *Motion for Reconsideration and Motion for Stay and Abeyance*, ECF No. 11, be **GRANTED** to the extent that Petitioner seeks reconsideration of the May 10, 2017, *Opinion and Order*, ECF No. 10, but the Magistrate Judge also recommended that the *Petition*, ECF No. 3, and this action be **DISMISSED**. *Report and Recommendation*, ECF No. 13. Although the parties were advised of their right to object to that recommendation and of the consequences of their failure to object, there has been no objection.

The *Report and Recommendation*, ECF No. 13, is **ADOPTED AND AFFIRMED**. To the extent that the motion seeks reconsideration of the May 10, 2017, *Opinion and Order*, ECF No. 10, Petitioner's *Motion for Reconsideration and Motion for Stay and Abeyance*, ECF No. 11, is **GRANTED**. However, for the reasons stated in the *Report and Recommendation*, Petitioner's first and fifth claims are dismissed as without merit and Petitioner's second, third, and fourth claims are dismissed as procedurally defaulted. Accordingly, the *Petition*, ECF No. 3, and this action are **DISMISSED**.

Pursuant to Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, the Court now considers whether to issue a certificate of appealability. “In contrast to an ordinary civil litigant, a state prisoner who seeks a writ of habeas corpus in federal court holds no automatic right to appeal from an adverse decision by a district court.” *Jordan v. Fisher*, — U.S. —, 135 S.Ct. 2647, 2650 (2015); 28 U.S.C. § 2253(c)(1) (requiring a habeas petitioner to obtain a certificate of appealability in order to appeal.)

When a claim has been denied on the merits, a certificate of appealability may issue only if the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make a substantial showing of the denial of a constitutional right, a petitioner must show “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893, n. 4 (1983)).

When a claim has been denied on procedural grounds, a certificate of appealability may issue if the petitioner establishes that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Id.*

Upon review of the record, this Court is not persuaded that reasonable jurists could debate whether petitioner’s claims should have been resolved differently or that

jurists of reason would find it debatable whether this Court was correct in its procedural rulings. Therefore, the Court **DECLINES** to issue a certificate of appealability.

The Clerk is **DIRECTED** to enter **FINAL JUDGMENT**.

IT IS SO ORDERED.


MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT