

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JESEAN CALLENDER,

Petitioner,

vs.

Civil Action 2:16-cv-1120
JUDGE ALGENON L. MARBLEY
Magistrate Judge King

WARDEN, ROSS CORRECTIONAL
INSTITUTION,

Respondent.

ORDER

On August 24, 2017, the United States Magistrate Judge recommended that Petitioner's *Motion for Stay and Abeyance* (Doc. 10) be denied and that this action be dismissed, reasoning that Petitioner's claims were procedurally defaulted. *Report and Recommendation* (Doc. 12). Although the parties were advised of their right to object to that recommendation and of the consequences of their failure to do so, there has been no objection.

The *Report and Recommendation* (Doc. 12) is **ADOPTED AND AFFIRMED**. Petitioner's *Motion for Stay and Abeyance* (Doc. 10) is **DENIED**. This action is hereby **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).

Where, as here, the claims have 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. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

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**.

s/Algenon L. Marbley
Algenon L. Marbley
United States District Judge