

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Twan McCrae,

Petitioner,

v.

Case No. 2:18-cv-1211

**Warden, London
Correctional Institution,**

Judge Michael H. Watson

Magistrate Judge Deavers

Respondent.

OPINION AND ORDER

On October 12, 2018, the Magistrate Judge issued a Report and Recommendation pursuant to Rule 4 of the Rules Governing Section 2254 Cases recommending that the Petition for a writ of habeas corpus be dismissed because both the Petition was unsigned and Petitioner failed to present any federal claim warranting relief. ECF No. 2. On October 16, 2018, Petitioner re-submitted a Petition which he signed under penalty of perjury in compliance with Rule 2(c)(5) of the Rules Governing Section 2254 Cases. ECF No. 4. Petitioner also has filed an Objection to the Magistrate Judge's Report and Recommendation, requesting the Court to accept the signed copy of the Petition. ECF No. 5. Petitioner does not otherwise object to the Magistrate Judge's recommendation of dismissal of his claims on the grounds that they simply do not provide a basis for relief. Therefore, although the Court accepts Petitioner's filing of a signed Petition, for the reasons addressed by the Magistrate Judge, the signed Petition does not assist him in obtaining the relief he seeks.

Petitioner does not raise any other objections to the Magistrate Judge's R&R other than as it relates to the signed petition; thus, he has waived further review pursuant to 28 U.S.C. § 636(b). Accordingly, Petitioner's Objection to the dismissal of this action, ECF No. 5, is **OVERRULED**. The Report and Recommendation, ECF No. 2, is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

The Court **DECLINES** to issue a certificate of appealability.

Pursuant to Rule 11 of the Rules Governing Section 2255 Proceedings for the United States District Courts, the Court now considers whether to issue a certificate of appealability. See 28 U.S.C. § 2255(d). When a claim has been denied on the merits, a certificate of appealability may be issued 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 be issued 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 Court further certifies that the appeal would not be in good faith and that an application to proceed in forma pauperis on appeal should be **DENIED**.

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

IT IS SO ORDERED.


MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT