

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

TONY BRANTLEY,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-13-1352-F
)	
EDWARD EVANS, Acting Director,)	
)	
Respondent.)	

ORDER

Petitioner, a state prisoner appearing *pro se* and *in forma pauperis* whose pleadings are liberally construed, brings this action seeking habeas relief under 28 U.S.C. § 2254.

Magistrate Judge Gary M. Purcell entered his Report and Recommendation in this matter on January 16, 2014 (the Report). Doc. no. 10. The Report recommends that the petition be dismissed for lack of jurisdiction, as a second or successive petition for which petitioner has not obtained prior authorization from the Tenth Circuit Court of Appeals. Petitioner objected to the magistrate judge's recommended findings and conclusions. Doc. no. 11. Having conducted *de novo* review, and having fully considered petitioner's objections, the court concurs with the magistrate judge's determinations and concludes that it would not be useful to cite any additional arguments or authorities here.

Accordingly, the Report and Recommendation of Magistrate Judge Purcell is **ACCEPTED, ADOPTED** and **AFFIRMED**. The petition for a writ of habeas corpus is **DISMISSED** for lack of jurisdiction.

Petitioner is entitled to a certificate of appealability only upon making a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). This standard is satisfied by demonstrating that the issues movant seeks to raise are deserving of further proceedings, debatable among jurists of reasons, or subject to different resolution on appeal. *See, Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (“[W]e give the language found in §2253(c) the meaning ascribed it in [*Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)], with due note for the substitution of the word ‘constitutional.’”). “Where a district court has rejected the constitutional claims on the merits,...[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* When a prisoner’s habeas petition is dismissed on procedural grounds without reaching the merits of the prisoner’s claims, “a COA should issue when the prisoner shows, at least, 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.* Petitioner has not made the requisite showing; a certificate of appealability is **DENIED.**

Dated this 4th day of February, 2014.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE