

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

JESSE J. WOODSIDE-FISHER,)
Petitioner,)
v.) Case No. CIV-15-314-D
COMANCHE COUNTY,)
Respondent.)

ORDER

This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Gary M. Purcell pursuant to 28 U.S.C. § 636(b)(1)(B). Upon initial screening, Judge Purcell recommends that the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus be dismissed without prejudice for failure to exhaust state court remedies.

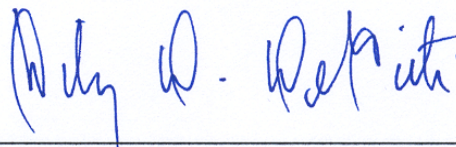
The case file shows no timely objection to the Report or request for additional time to object, even though Petitioner was expressly informed of his right to object, the procedure for doing so, and the consequences of failing to object. Therefore, the Court finds that Petitioner has waived further review of all issues addressed in the Report. See Moore v. United States, 950 F.2d 656, 659 (10th Cir. 1991); see also United States v. 2121 East 30th Street, 73 F.3d 1057, 1060 (10th Cir. 1996). Further, for the reasons explained by Judge Purcell, the Court finds that the Petition should be dismissed without prejudice to refiling.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 8] is ADOPTED in its entirety. The Petition Under 28 U.S.C. § 2254 for Writ of Habeas

Corpus is DISMISSED without prejudice to a future filing. A separate judgment of dismissal shall be entered.

IT IS FURTHER ORDERED that pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, the Court must issue or deny a certificate of appealability (“COA”) when it enters a final order adverse to a petitioner. A COA may issue only upon “a substantial showing of the denial of a constitutional right.” *See* 28 U.S.C. §2253(c)(2). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, 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.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Upon consideration, the Court finds the requisite standard is not met in this case. Therefore, a COA will be denied. The denial shall be included in the judgment.

IT IS SO ORDERED this 22nd day of May, 2015.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE