

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

James Alexander,	)	
	)	
Petitioner,	)	No. 2:13-cv-2868-RMG
	)	
v.	)	
	)	<b>ORDER</b>
Michael McCall,	)	
	)	
Respondent.	)	
_____	)	

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending that the Court grant Respondent’s motion for summary judgment. (Dkt. No. 22). As set forth below, the Court agrees with and wholly adopts the R&R as the order of the Court.

**Background**

Petitioner, a state prisoner proceeding pro se, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Dkt. No. 1). Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) DSC, this matter was automatically referred to a United States Magistrate Judge for pretrial proceedings. Respondent then filed a motion for summary judgment. (Dkt. No. 14). Petitioner then filed a response opposing the motion. (Dkt. No. 17). The Magistrate Judge then entered the present R&R recommending the Court grant the motion. (Dkt. No. 22). Petitioner did not file timely objections to the R&R.

**Legal Standard**

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making

a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

### **Discussion**

After review of the record and the R&R and finding no clear error on the face of the record, the Court agrees with and wholly adopts the R&R as the order of the Court. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). For the reasons set forth in the R&R, the Court agrees with the Magistrate Judge that Respondent’s motion for summary judgment must be granted and this petition dismissed.

### **Conclusion**

As set forth above, the Court agrees with and adopts the R&R as the order of the Court. (Dkt. No. 22). Accordingly, Respondent’s motion for summary judgment is granted. (Dkt. No. 14).

### **Certificate of Appealability**

The governing law provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies the standard by demonstrating that reasonable jurists would find this court’s assessment of his constitutional claims debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*,

252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, a certificate of appealability is **denied**.

**AND IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'RM Gergel', written over a horizontal line.

Richard Mark Gergel  
United States District Court Judge

July 22, 2014  
Charleston, South Carolina