

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

MARSHALL RAY MILLER,

PETITIONER

v.

JOSEPH L. MCFADDEN, WARDEN,

RESPONDENT

Case No. 4:15-cv-2672-TLW

ORDER

Petitioner Marshall Ray Miller, a state prisoner proceeding pro se, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. The matter now comes before the Court for review of the Report and Recommendation (R&R) of Magistrate Judge Rogers, to whom this case was assigned. ECF No. 49. In the R&R, the Magistrate Judge recommends granting Respondent's motion for summary judgment over Petitioner's opposition. ECF Nos. 29, 44. Petitioner filed objections to the R&R and Respondent filed a reply in support. ECF Nos. 61, 65. This matter is now ripe for decision.

In reviewing the R&R, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Hous. Auth. of City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in Wallace, the Court closely reviewed de novo the R&R, Petitioner's objections, Respondent's reply in support of the R&R, and the record in this case. Petitioner's objections do not change the conclusion reached by the state courts and the Magistrate Judge that Petitioner's claims have no merit.

After careful consideration, Petitioner's objections are overruled, and the R&R is ACCEPTED. For the reasons articulated by the Magistrate Judge, Respondent's motion for summary judgment is GRANTED. In light of this ruling and as recommended in the R&R, Petitioner's motion to appoint counsel and motion for an evidentiary hearing, ECF No. 45, are hereby TERMINATED AS MOOT.

The Court has reviewed the Petition in accordance with Rule 11 of the Rules Governing Section 2254 Proceedings. The Court concludes that it is not appropriate to issue a certificate of appealability as to the issues raised in this Petition. Petitioner is advised that he may seek a certificate from the Fourth Circuit Court of Appeals under Rule 22 of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

s/ Terry L. Wooten
Terry L. Wooten
Chief United States District Judge

February 27, 2017
Columbia, South Carolina