

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

WALLACE EUGENE EVATT, JR.,)	
)	
Petitioner,)	
)	C/A No.: 4:18-cv-0994-TLW
v.)	
)	
WARDEN STEPHAN,)	
)	
Respondent.)	
_____)	

Petitioner Wallace Eugene Evatt, Jr., proceeding *pro se*, filed this petition pursuant to 28 U.S.C. § 2254. ECF No. 1. Respondent Warden Stephan filed a motion for summary judgment on June 8, 2018, ECF No. 11, to which Petitioner responded, ECF No. 35. Petitioner has also filed various other motions. ECF Nos. 22, 24, 25, 29, 30, 31, 51.

This matter now comes before this Court for review of the Report and Recommendation (the Report) filed on November 1, 2018, by United States Magistrate Judge Thomas E. Rogers, III, to whom this case was previously assigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c), (D.S.C.). In the Report, the Magistrate Judge recommends granting summary judgment and dismissing the petition. ECF No. 39. Petitioner filed Objections to the Report, ECF No. 43, and Respondent filed a Reply to the Objections, ECF No. 48. This matter is now ripe for disposition.

The Court is charged with conducting a *de novo* review of any portion of the Magistrate Judge’s Report and Recommendation to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636. In conducting its review, 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. Housing Auth. of the 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 has carefully reviewed, *de novo*, the Report, the applicable law, the Objections, and all other relevant filings, including cites to the record by counsel. As noted in the Report, Petitioner has not presented cause for the procedural default of four of his habeas claims, and these claims are therefore procedurally barred for the reasons stated in the Report. ECF No. 39 at 10–20. Further, the Court accepts the Magistrate Judge's careful factual and legal analysis, which concludes that the "PCR court's rejection of the ineffective assistance of counsel ground for relief did not result in an unreasonable application of *Strickland* and was not based upon an unreasonable determination of facts in light of the state court record." *Id.* at 22. Therefore, after careful consideration, **IT IS ORDERED** that the Report, ECF No. 39, is **ACCEPTED**, and the Petitioner's Objections, ECF No. 43, are **OVERRULED**. The Respondent's motion for summary judgment, ECF No. 11, is **GRANTED**, and the Petition, ECF No. 1, is hereby **DISMISSED**. In light of the dismissal of the Petition, all other pending motions are hereby deemed **MOOT**. ECF Nos. 22, 24, 25, 29, 30, 31, 51.

The Court has reviewed this 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 herein. 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
Chief United States District Judge

February 5, 2019
Columbia, South Carolina