IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

JUDEX DESIR,	§	
Petitioner,	§	
	§	
vs.	§	CIVIL ACTION NO. 8:10-488-HFF-BHH
	§	
WARDEN ANTHONY PADULA,	§	
Respondent.	§	

AMENDED ORDER

This case was filed as a 28 U.S.C. § 2254 action. Petitioner is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Respondent's Motion for Summary Judgment (Dkt. # 9) be granted and the Habeas Petition be dismissed with prejudice. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on September 28, 2010, but Petitioner failed to file any objections. Hence, on October 20, 2010, the Court adopted the Report and entered judgment

in favor of Respondent. Soon thereafter, however, Petitioner informed the Court that he had not received a copy of the Report. Subsequently, the Court sent Petitioner another copy of the Report and then granted to him a lengthy extension of time to object. The Clerk of Court entered Petitioner's objections to the Report on December 15, 2010.

The Court has now reviewed the objections, but finds them to be without merit. Petitioner has generally argued positions that the Magistrate Judge previously considered. Thus, inasmuch as the Court finds the discussion and analysis contained in the Magistrate Judge's Report to be correct, there is no need for the Court to rewrite here what the Magistrate Judge has already written there.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Petitioner's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that Respondent's Motion for Summary Judgment (Dkt. # 9) is **GRANTED** and the Habeas Petition is **DISMISSED** with prejudice.

Petitioner has moved for a certificate of appealability from this Court. The governing law applicable to certificates of appeals provides that "[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

A movant satisfies this standard by demonstrating that reasonable jurists would find this Court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by this Court is 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 the case at bar, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, Petitioner's motion for a certificate of appealability is **DENIED**.

IT IS SO ORDERED.

Signed this 29th day of September, 2011, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

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NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.