

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

| | | |
|----------------------------------|---|---------------------------|
| Don L. Hughes, |) | C/A No.: 9:11-2459-JFA-BM |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | ORDER |
| |) | |
| Tim Riley, Warden of Tyger River |) | |
| Correctional Institution, |) | |
| |) | |
| Respondent. |) | |
| |) | |

The *pro se* petitioner, Don L. Hughes, is a prisoner currently housed Tyger River Correctional Institution of the South Carolina Department of Corrections. He has filed a petition pursuant to 28 U.S.C. § 2254 challenging his South Carolina state court conviction for criminal sexual conduct with a minor.

The Magistrate Judge assigned to this action¹ has prepared a thorough Report and Recommendation and opines that the respondent's motion for summary judgment² should be granted. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation 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 to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b)(1).

² The respondent has filed a motion for summary judgment. An order was then issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying petitioner of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. Petitioner responded in opposition to the motion.

Petitioner was advised of his right to file objections to the Report and Recommendation, which was entered on the docket June 21, 2012. Petitioner, however, failed to file objections and the within which to do so has now expired. In the absence of specific objections to the Report of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

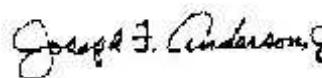
After carefully reviewing the applicable laws, the record in this case, and the Report and Recommendation, this court finds the Magistrate Judge's recommendation is proper and it fairly and accurately summarizes the facts and applies the correct principles of law. The Report is incorporated herein by reference.

Accordingly, respondent's motion for summary judgment is granted, and the §2254 petition is denied.

It is further ordered that a certificate of appealability is denied because the petitioner has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).³

IT IS SO ORDERED.

July 12, 2012
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge

³ A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (West 2009). A prisoner satisfies this standard by demonstrating that reasonable jurists would find both that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. *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 instant matter, the court finds that the petitioner has failed to make "a substantial showing of the denial of a constitutional right."