

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

Carlos Gonzalez, a/k/a Carolos Conzales, )  
)  
Petitioner, )  
)  
vs. )  
)  
Warden Willie L. Eagleton, )  
)  
Respondent. )  
\_\_\_\_\_)

No.: 9:15-cv-3386-RMG

**ORDER**

This matter comes before the Court on the Report and Recommendation (R & R) of the Magistrate Judge (Dkt. No. 35), recommending that the Court grant Petitioner’s request to dismiss this action without prejudice (Dkt. No. 34). For the reasons stated below, the Court **ADOPTS** the R & R and **DISMISSES** the habeas petition.

Petitioner filed his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on August 21, 2015. (Dkt. No. 1). Respondent moved for summary judgment on several grounds, including that the petition was successive and that Petitioner had failed to seek permission from the Fourth Circuit prior to its filing. (Dkt. No. 24). Petitioner replied to the motion for summary judgment on September 16, 2016. (Dkt. No. 34). In his response, he conceded that this Court lacked jurisdiction because he had not received permission from the Fourth Circuit to file a successive petition, and he requested that the Court dismiss his petition without prejudice so that he could request permission from the Fourth Circuit to properly file a successive petition.

On September 19, 2016, the Magistrate Judge issued an R & R recommending that the Court grant Petitioner’s request. (Dkt. No. 35). No objections have been filed.

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, 270–71 (1976). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). A District Court must “make a *de novo* determination of those portions of the report . . . or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). Where no timely filed objection has been made, the District Court is obligated to review the R & R to confirm that “there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

Having fully consider the R & R, the record, and the relevant legal standards, the Court finds that the Magistrate Judge ably and accurately set forth the legal and factual issues in this matter and correctly concluded that Petitioner’s claims are not cognizable on habeas review and that his request should be granted. Therefore, the Court **ADOPTS** the R & R (Dkt. No. 35) as the order of this Court and **DISMISSES** the habeas petition without prejudice.

### Certificate of Appealability

The governing law provides that:

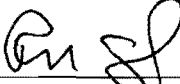
(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(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.**

  
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Richard Mark Gergel  
United States District Court Judge

October 14, 2016  
Charleston, South Carolina