**UNITED STATES DISTRICT COURT** **EASTERN DISTRICT OF TEXAS**

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| VERNON KING, JR., | § | |
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| Petitioner, | § | |
| | § | |
| *versus* | § | CIVIL ACTION NO. 1:10-CV-409 |
| | § | |
| DIRECTOR, TDCJ-CID, | § | |
| | § | |
| Respondent. | § | |

**MEMORANDUM ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Vernon King, Jr., an inmate confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning the petition. The magistrate judge recommends the petition be denied.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. No objections were filed to the Report and Recommendation.

**ORDER**

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered denying the petition.

In addition, the court is of the opinion petitioner is not entitled to a certificate of appealability regarding this matter. An appeal from a final judgment denying a petitioner federal habeas relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the petitioner to make a substantial showing that he has been denied a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner is not required to establish he would prevail on the merits. Rather, he must demonstrate that the issues he raises are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether a certificate of appealability should be granted should be resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

In this case, petitioner has not shown that the issue of whether his petition is meritorious is subject to debate among jurists of reason. The factual and legal questions raised have been consistently resolved adversely to petitioner and the questions presented are not worthy of encouragement to proceed further. As a result, a certificate of appealability shall not issue.

SIGNED at Sherman, Texas, this 30th day of April, 2013.

Marcia A. Crone

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE