

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

ADRIAN MAURICE HAYWARD §
VS. § CIVIL ACTION NO. 1:14cv336
DIRECTOR, TDCJ-CID §

ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Adrian Maurice Hayward, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to 28 U.S.C. § 636. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the petition be dismissed.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Petitioner filed objections to the Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. After careful consideration, the court is of the opinion the objections are without merit. The Magistrate Judge correctly concluded that petitioner's first three grounds for review are procedurally barred. Petitioner asserted these grounds for review in his second state application for writ of habeas corpus, application that the Texas Court of Criminal Appeals dismissed as an abuse of the writ. As the Court of Criminal Appeals regularly and strictly applies the abuse of the writ doctrine, the doctrine constitutes an adequate and independent ground for dismissal, providing a basis for application of the procedural default doctrine. *Barrientes v. Johnson*, 221 F.3d 741, 759-61 (5th Cir. 2000).

In his fourth ground for review, petitioner complains that his second state application for writ of habeas corpus was improperly considered by a state district judge who participated in the

prosecution of his case. However, it is “axiomatic that infirmities in state habeas proceedings do not constitute grounds for federal habeas relief.” *Moore v. Dretke*, 369 F.3d 844, 856 (5th Cir. 2004) (*per curiam*) (internal quotation marks and citation omitted).¹

ORDER

Accordingly, petitioner’s objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED** as the opinion of the court. A final judgment shall be entered in accordance with the recommendation of the Magistrate Judge.

In addition, the court is of the opinion petitioner is not entitled to a certificate of appealability concerning his petition. An appeal from a judgment denying 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 of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84; *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not demonstrate that he would prevail on the merits. Rather, he must demonstrate that the issues 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 to grant a certificate of appealability 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. 2000).

In this case, the petitioner has not shown that the issues raised by his petition are subject to debate among jurists of reason. The factual and legal issues raised by petitioner have been consistently resolved adversely to his position and the questions presented are not worthy of

¹ After he filed his objections, petitioner filed an amended petition. The amended petition did not set forth additionally grounds for review. Instead, the amended petition presented additional arguments as to why the fourth ground for review is meritorious. However, after considering petitioner’s additional arguments, the court remains of the opinion that his fourth ground for review does not provide petitioner with a basis for relief.

encouragement to proceed further. As a result, a certificate of appealability shall not issue in this matter.

So Ordered and Signed

Jul 16, 2016

A handwritten signature in black ink, appearing to read "Ron Clark", written in a cursive style.

Ron Clark, United States District Judge