



prior law, requires the movant to make a substantial showing of the denial of 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); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the movant need not establish that he should 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. If the motion was denied on procedural grounds, the movant must show that jurists of reason would find it debatable: (1) whether the motion raises a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Id.* at 484; *Elizalde*, 362 F.3d at 328. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the movant, 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).

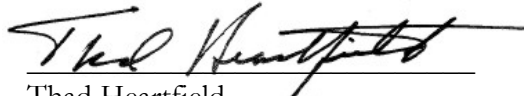
Here, the movant has not shown that any of the issues raised by his claims are subject to debate among jurists of reason, or that the procedural ruling is incorrect. In addition, the questions presented are not worthy of encouragement to proceed further. The movant has failed to make a sufficient showing to merit the issuance of a certification of appealability. Accordingly, a certificate of appealability will not be issued.

#### ORDER

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge (document no. 2) is **ADOPTED**. The Clerk of Court is directed to file the initial pleading (document no. 1) as a motion for leave to file a supplemental

pleading in civil action number 1:16-CV-454. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation. A certificate of appealability will not be issued.

**SIGNED** this the **31** day of **May, 2017**.



Thad Heartfield  
United States District Judge