IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

RICHARD WILLIAM JONES

VS.

CIVIL ACTION NO. 1:18cv97

UNITED STATES OF AMERICA

§

MEMORANDUM ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Movant Richard William Jones, a federal prisoner, proceeding *pro se*, brought this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the above-styled petition be denied and dismissed.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record and pleadings. No objections to the Report and Recommendation were filed by the parties.

Furthermore, movant is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under 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. 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.), cert. denied,

531 U.S. 849 (2000).

Here, movant has not shown that any of the issues raised by his claims are subject to debate

among jurists of reason. The factual and legal questions advanced by the movant are not novel and

have been consistently resolved adversely to his position. In addition, the questions presented are

not worthy of encouragement to proceed further. Therefore, movant has failed to make a sufficient

showing to merit the issuance of a certificate of appealability. Accordingly, a certificate of

appealability shall 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 is **ADOPTED**. A final judgment will be entered in this case

in accordance with the Magistrate Judge's recommendations.

SIGNED this the 12 day of May, 2020.

Thad Heartfield

United States District Judge

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