



In his objections, petitioner raises grounds for review which were not presented to the Texas Court of Criminal Appeals or previously in this proceeding. As the Court of Criminal Appeals would reject as an abuse of the writ a subsequent application asserting these grounds for review, *Ex parte Barber*, 879 S.W.2d 889, 892 n.1 (Tex.Crim.App. 1994), consideration of these grounds for review is procedurally barred. *Emery v. Johnson*, 139 F.3d 191, 195 (5th Cir. 1997).

### **ORDER**

Accordingly, the objections filed by petitioner 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**. A final judgment will be entered dismissing the petition.

In addition, the court is of the opinion petitioner is not entitled to a certificate of appealability. An appeal from a final judgment denying habeas relief may not proceed unless a certificate of appealability is issued. *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 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner is not required to establish that he would prevail on the merits. Rather, he must demonstrate that the issues raised in the petition 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 petitioner are subject to debate among jurists of reason. The factual and legal questions raised by petitioner have been consistently resolved adversely to his position and the questions presented are not worthy of

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

SIGNED at Beaumont, Texas, this 2nd day of August, 2021.

A handwritten signature in cursive script that reads "Marcia A. Crone".

---

MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE