

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

SHERMAN DIVISION

PETER JOHN ELLINGTON, #1819234	§	
VS.	§	CIVIL ACTION NO. 4:16cv666
DIRECTOR, TDCJ-CID	§	CONSOLIDATED WITH CIVIL ACTION NO. 4:16cv667

ORDER OF DISMISSAL

Petitioner Peter John Ellington, a prisoner confined in the Texas prison system, filed the above-styled and numbered petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petitions were referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation (Dkt. #42) concluding that the petitions should be denied. Ellington has filed objections (Dkt. #50).

Ellington is in custody pursuant to Collin County convictions for aggravated sexual assault of a child (Count I) and indecency with a child (Count II), in Case Number 416-82711-09. Pursuant to an open plea, Ellington pled guilty to both charges. On September 27, 2012, Ellington was sentenced to 54 years of imprisonment for aggravated sexual assault of a child and 20 years of imprisonment for indecency with a child, with the sentences running consecutively. The convictions were affirmed as modified. *Ellington v. State*, No. 05-12-01625-CR, 2013 WL 6405486 (Tex. App. - Dallas Dec. 5, 2013, pet. ref'd). On July 27, 2016, the Texas Court of Criminal Appeals denied his state applications for a writ of habeas corpus without written order on the findings of the trial court without a hearing.

The present petitions were filed on August 25, 2016. Ellington brings the following grounds for relief:

1. Actual innocence;
2. Involuntary plea;
3. Ineffective assistance of trial counsel;
4. Prosecutorial misconduct;
5. Multiple punishments for the same act/double jeopardy;
6. Ineffective assistance of appellate counsel for failing to raise a double jeopardy argument; and
7. Ineffective assistance of trial counsel for forbidding him to inform the court he is a citizen of Canada.

The Magistrate Judge thoroughly addressed each claim and found that they lack merit. In particular, Ellington failed to satisfy the requirements of 28 U.S.C. § 2254(d). Ellington's objections are simply reassertions of the claims raised in his petitions. He has not shown that the Magistrate Judge's findings and conclusions were erroneous in any respect.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Ellington to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Ellington's objections are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the above-styled petitions for a writ of habeas corpus are **DENIED** and the cases are **DISMISSED** with prejudice. It is further

ORDERED that a certificate of appealability is **DENIED**. It is finally

ORDERED that all motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this 21st day of August, 2019.

A handwritten signature in black ink that reads "Amos Mazzant". The signature is written in a cursive style with a horizontal line underneath it.

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE