

writ no. 68,701-02, in which he asserted that he had received factual "finding(s) from the trial court which now compels him to seek dismissal of the writ without prejudice before this honorable court makes a final ruling on the writ." The writ was dismissed by the Texas Court of Criminal Appeals on July 30, 2008. Therefore, petition failed to exhaust state court remedies because the Texas Court of Criminal Appeals has not ruled on the issues presented in this petition, either through a petition for discretionary review or by petition for writ of habeas corpus. Accordingly, the respondent's motion to dismiss should be granted.

O R D E R

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**. It is therefore

ORDERED that the respondent's motion to dismiss is **GRANTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

SIGNED this 8th day of February, 2010.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE