

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

MICHAEL EARL JOHNSON,

Plaintiff,

v.

WILLIAM STEPHENS, DIRECTOR TDCJ-
CID,

Defendant.

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CIVIL ACTION NO. 5:15-CV-00029-RWS

**ORDER ADOPTING REPORT AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Petitioner Michael Earl Johnson, proceeding pro se, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a conviction for aggravated robbery with a deadly weapon. The Court referred this matter to the Honorable Caroline M. Craven, United States Magistrate Judge, for consideration pursuant to 28 U.S.C. § 636. The Magistrate Judge has submitted a Report and Recommendation recommending the petition be denied. Docket No. 18 at 25.

The Court has received and considered the Report and Recommendation along with the record and pleadings. No objections have been filed. The Court agrees with the Magistrate Judge's conclusion that the Petitioner's arguments regarding ineffective assistance of counsel and in-court identification do not meet the standard for habeas relief. Accordingly, finding no plain error in the findings of fact and conclusions of law of the Magistrate Judge, this Court adopts the Magistrate Judge's findings and conclusions as those of the Court. It is hereby **ORDERED** that Petitioner's claims are **DENIED WITH PREJUDICE**.

Additionally, the Court finds that Petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying post-conviction collateral relief may not proceed unless a judge issues a certificate of appealability. 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 need not establish that he would 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 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, 280–281 (5th Cir.), cert. denied, 531 U.S. 849 (2000).

In this case, Petitioner has not shown that the issues raised by his claims are subject to debate among jurists of reason, and the questions presented are not worthy of encouragement to proceed further. Therefore, Petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability. Accordingly, a certificate of appealability will not be issued.

SIGNED this 18th day of September, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE