

prosecution.” To date, Petitioner has not updated his address with the Court or filed objections to the Report.

Because Petitioner did not file objections to the Report and Recommendation, this Court reviews the Magistrate Judge’s findings of fact and conclusions of law for clear error. *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988). This Court agrees with the Magistrate Judge that the petition should be dismissed for failing to exhaust state habeas remedies.

Additionally, the Court finds that Petitioner is not entitled to 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 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); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the petitioner 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 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.), *cert. denied*, 531 U.S. 849 (2000).

Here, Petitioner 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 Petitioner 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. Thus, Petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability. Therefore, a certificate of appealability shall not be issued. Accordingly, the Court hereby **ADOPTS** the Report of the United

States Magistrate Judge as that of this Court. It is hereby **ORDERED** that this petition is **DISMISSED** without prejudice.

SIGNED this 17th day of July, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE